INDEX.

ACCORD.

1. Agreement to accept smaller sum in satisfaction of debt, carried into execution by receipt of money and execution of release, &c., is valid and irrevocable. *Gordon* v. *Moore*, 618.

2. Agreement to accept from third person, in behalf of debtor, money or security for smaller sum in satisfaction of whole is binding. *Id.*

3. Agreement between judgment debtor and creditor that, in consideration of debtor paying down part of debt and costs, and on condition of his paying residue by instalments, creditor will not proceed on judgment, is *nudum pactum*, and does not prevent creditor, after payment of whole debt and costs, from enforcing payment of interest. *Foakes* v. *Beer*, 21.

ACCOUNT.

1. An account rendered is only *prima facie* evidence against party making it. *Clark* v. *Marbourg*, 478.

2. In absence of fraud, mistake or ignorance of his rights, owner of building cannot open account stated between himself and builder, and defend note given in settlement on ground of damages, from delay in prosecution of the work, for which at settlement he had made no claim. *Pickel* v. *Association*, 208.

ACKNOWLEDGMENT.

Statute requiring, in case of deed by husband and wife of wife's realty, that deed be "shown and explained" to wife by officer taking the acknowledgment, omission from officer's certificate that this has been done, is fatal. *Paine* v. *Baker*, 796.

ACTION. See CHECK. COMMON CARRIER, 2. CONFLICT OF LAWS, 1. CORPORATION, 28. FORMER RECOVERY, 1. FRAUD, 3. HUSBAND AND WIFE, 4, 5, 19. JUDGMENT, 1. LIMITATIONS, STATUTE OF, 4. OFFICER.

1. Trespass on the freehold will not lie in Vermont for trespass on land in Massachusetts. *Nile* v. *Howe*, 680.

2. Homicide of person in one state on line of railroad purchased, owned and worked by railroad company in another, is actionable in latter state. *Central Railroad Co.* v. *Swint*, 138.

3. In such a case, administrator in first state for use of widow and children, could bring suit in latter state by complying with statutory requirements thereof, but not otherwise. And if administrator be appointed in latter state, he may bring the suit for like uses. *Id.* See *infra*, 7.

4. A. allowed water to collect in his cellar so that it found its way into B.'s cellar which adjoined, but was somewhat deeper. *Held*, that A. was liable. *Snow* v. *Whitehead*, 230, *and note.*

5. Action on bond given on the issue of temporary injunction in suit brought for perpetual injunction is premature until final judgment in injunction suit; voluntary dismissal of same by plaintiff is such final judgment. *Brown* v. *Galena Co.*, 71.

6. If A. borrows money for B., securing same by transfer of stock furnished by B., to whom the money borrowed is paid by A., action cannot be maintained by A. against B., before A. has repaid the money, or sustained some loss. *Reeve* v. *Dennett*, 269.

ACTION.

7. Administrator appointed in one state cannot maintain action in another, where law of state of appointment prohibits him from instituting, maintaining or prosecuting action in his own state for damages from death of intestate through another's negligence. *Limekiller* v. *Railroad Co.*, 269.

8. Lies for conspiring to prevent collection of tax levied under mandamus to pay judgments of plaintiff and others, and, by threats and hostile demonstrations, preventing any bidding at advertised sale of horses, &c., levied upon by collector, and intimidating tax payers so that they did not pay the tax. *Findlay* v. *McAllister*, 268.

9. Does not lie by A. against B. for conspiracy between B. and C., in obtaining judgment against A. in court of another state having jurisdiction of subject-matter and parties, in which A. appeared and answered, but was defaulted, which judgment remains in force, and to satisfy which A.'s property in that state was sold. *Ergstrom* v. *Sherburn*, 209.

10. One with whom contract for carriage of goods is made, and who is described therein as consignor, consignee and sole owner, may maintain action to recover overcharge exacted by carrier as condition of delivery, although he was not in fact owner and did not personally furnish and pay overchage. *Waterman* v. *Ry. Co.*, 139.

11. Privity of contract, express or implied, is necessary to maintenance of action for money had and received. *Nolan* v. *Manton*, 71.

12. Widow received from savings' bank money deposited by her husband in his name. Letters of administration on husband's estate were afterwards granted to another. In suit against her by administrator for money had and received, *held*, that if she received the money to pay it to administrator when appointed, or to hold for benefit of husband's estate, the suit might be maintained; but otherwise, if she received the money as her own, as there would then be no privity of contract. *Id.*

13. Where there is a contract for delivery of certain articles in different quantities and at specified intervals, a notice not to send any more, given before completion, entitles seller to consider contract at an end. *Textor* v. *Hutchins*, 208.

14. *Quære*, Whether it entitles injured party to immediate action for damages in respect to all future deliveries. *Id.*

15. Shortly after such notice but before time for completion of contract, a composition having been made with certain creditors, including party injured, and he then claiming no damages for breach of the contract, *held*, that he could not afterwards maintain action therefor. *Id.*

16. Where railroad company agreed with city to pay given sum on cost of viaduct proposed to be constructed in street, there being no illegal motive in tendering such aid, *held*, that company was not jointly liable with city in tort for private injury to adjoining property caused by viaduct. *Culbertson Co.* v. *City*, 412.

17. City alone has authority to construct viaduct in street, and when one is so constructed by city, even when done under joint superintendence of city official and chief engineer of railroad company, which paid part of the price, *held*, that viaduct was still public property belonging to city alone. *Id.*

ACTS OF CONGRESS.

1850, September 9.	See CONSTITUTIONAL LAW, 26.
1856, June 15.	See CONSTITUTIONAL LAW, 8.
1874, Revised Statutes.	
Sect. 563.	See CONSTITUTIONAL LAW, 32.
Sect. 639.	See REMOVAL OF CAUSES, 9.
Sect. 649.	See PRACTICE, 2.
Sect. 721.	See UNITED STATES COURTS, 2.
Sect. 3564.	See UNITED STATES, 1.
Sect. 4450.	See ADMIRALTY, 3.
Sect. 4745.	See PENSION, 3.
Sect. 4747.	See PENSION, 1.
Sect. 5219.	See NATIONAL BANK.
Sect. 5258.	See CONSTITUTIONAL LAW, 8.

ACTS OF CONGRESS.

1874, Sect. 5485.	See PENSION, 2.
Sect. 5508.	See CONSTITUTIONAL LAW, 16.
1875, March 3.	See MUNICIPAL CORPORATION, 14.
1875, March 3.	See REMOVAL OF CAUSES, 1, 3, 5, 7, 9.
1882, August 3.	See CONSTITUTIONAL LAW, 14.

ADMINISTRATOR. See EXECUTORS AND ADMINISTRATORS.

ADMIRALTY. See CONSTITUTIONAL LAW, 32. SET-OFF, 1.

1. Words in charter party, "now sailed, or about to sail, from Benizof, with cargo for Philadelphia," require vessel to be already loaded. *The Wickham*, 209.

2. Where certain claims for damages were rejected by District Court because not included in original libel, *held* that Circuit Court, on appeal, could, in its discretion, permit libellants to file supplemental and amended libel setting up such claims. *The Charles Morgan*, 539.

3. Findings of board of local inspectors and documents connected therewith, in proceeding under Rev. Stat., sect. 4450, for investigation of facts connected with collision, so far as they had a bearing on conduct of licensed officers on board the boats, are inadmissible in collision suit in admiralty when offered by defendants, as tending to affect evidence offered by libellants to show that their boat was in her proper position and had proper watches and lights set at the time of collision. *Id.*

AGENT. See ATTACHMENT, 2. BANK, 2-4. CORPORATION, 26. EVIDENCE, 11. INSURANCE, 24. MORTGAGE, 22. PARTNERSHIP, 6, 7.

1. Consul signing note as consul is individually liable thereupon. *De Bian* v. *Gola*, 777, *and note.*

2. Consular seal does not make the note a single bill. *Id.*

3. General agent of absent principal, having sole authority to manage his business, will necessarily have authority to bring suits to collect debts, and insurance in case of loss by fire. *German Co.* v. *Grunert*, 479.

4. Who receives money for his principal upon contract not criminal or immoral in its character, but contrary to public policy only, will be estopped from setting up supposed illegality of such contract in defence to action by principal. *Taylor* v. *Pells*, 742.

5. Where association of several railroad companies is formed for transaction of business of common carrier, which is conducted by general managers of each, as in case of partnership, so long as one of companies acts within general scope of its powers, association will be bound, though particular company has exceeded its authority, as tested by articles of association. *E. and P. Despatch* v. *Cecil*, 539.

6. Contract of railway company or association of such companies, made by its usual agents, with shipper, to ship and carry large quantity of grain at five cents per hundred less than customary rates, but that same should be billed and freight paid at current rates, difference to be forthwith paid back to shipper, is valid. *Id.*

7. In suit against such association on contract made by local agent of one of companies, want of power in local agent to make the contract cannot be shown by the articles of association. *Id.*

8. To prove ratification of special contract made by station agent of railway company in Illinois, which company was member of such association, it appearing that general manager of same company approved such contract, plaintiff offered in evidence three telegrams between said general manager and general manager of association, showing that though first had exceeded his orders, latter would protect him. *Held*, that telegrams were competent. *Id.*

9. Where general manager of such association had notice of special contract at reduced rate made by agent of one of associated companies, and afterwards furnishes cars and transports the grain, this is evidence from which ratification of special contract may be inferred. *Id.*

AMENDMENT. See ADMIRALTY, 2. EXECUTORS AND ADMINISTRATORS, 5. MECHANICS' LIEN, 2.

AMENDMENT.

Ad damnum in declaration may be increased after verdict. *Tomlinson* v. *Earnshaw*, 618.

ANIMALS. See MORTGAGE, 8. TORT, 1–4. TROVER, 4–6.

APPEALS. See ERRORS AND APPEALS.

APPORTIONMENT.

1. Interest due on notes, when it is to be appropriated to income, may be apportioned. *Veazie* v. *Forsaith*, 72.

2. Part of trust estate consisted of notes due from an insolvent estate, which paid only part of amount due thereon. *Held*, that the loss was to be borne *pro rata* by principal and interest, and amount received as interest for period since date of the trust deed credited to income for years in which it was earned. *Id.*

ARBITRATION.

1. Even if language of submission be broad enough to cover claim, which it clearly appears was not before arbitrators, award will not bar it. *Lee* v. *Dolan*, 413.

2. Upon disagreement of the two arbitrators to whom controversy was submitted, and selection by them of third arbitrator under agreement of reference, an award made by two of the arbitrators, without giving party against whom it is rendered an opportunity of being heard, is void. *Alexander* v. *Cunningham*, 413.

ARREST. See MALICIOUS PROSECUTION, 3–6.

ASSAULT. See CRIMINAL LAW, II. DAMAGES, 1, 2, 5.

ASSIGNMENT. See ATTACHMENT, 3, 4. ATTORNEY, 1. BILLS AND NOTES, 1, 10. CONFLICT OF LAWS, 2. DEBTOR AND CREDITOR, 1. EXECUTION, 4. INSURANCE, 1, 11, 12, 19, 21. LIS PENDENS. REMOVAL OF CAUSES, 4. TORT, 5, 6.

1. Assignee of cause of action against railroad company arising under 43d sect. Missouri Railroad Law, for double damages for killing of live stock, cannot sue. *Snyder* v. *Wabash, &c., Co.*, 209.

2. Future wages to be earned under present contract, indefinite as to time and amount, may be assigned. *Wade* v. *Bessey*, 139.

3. Mortgages invalid against creditors of mortgagor are invalid against his assignee for their benefit. *Blandy* v. *Hall*, 256, *and note.*

4. Lien of such mortgage is not preserved by clause in assignment excepting from its operation all existing liens, and providing that such liens shall not be affected thereby. *Id.*

5. Where statute requires entry, on chattel mortgage, of certain statement, defect in such statement cannot be cured by conditions contained in mortgage but not referred to in statement. *Id.*

6. Voluntary assignment for benefit of creditors of personal property, wherever situated, passes it to assignee, at time of assignment, and will prevail over subsequent lienors, provided it is not in conflict with some positive or customary law of state where property may be located. *Askew* v. *Bank*, 399, *and note.* See *infra*, 9.

Agent appointed by owner to sell coal lands upon commission, employed another to aid him in effecting sale, promising to give latter, as was claimed, half commissions. Sale having been effected, *held*, on review of evidence, there was no equitable assignment of half of claim for commissions. *Wyman* v. *Snyder*, 479.

8. Burden of proof is upon party who claims equitable assignment of one-half of demand. *Id.*

9. Assignment for benefit of creditors executed in another state by debtor domiciled there, which provides that certain creditors shall be paid in full before others receive anything, and which is assented to by creditors holding claims exceeding in amount value of assigned property, if valid by laws of that state, will be upheld in Massachusetts as against attaching creditor of assignor domiciled there. *Train* v. *Kendall*, 269. See *ante*, 6

ASSIGNMENT.

10. Where party conveyed all his estate to trustee for sale and collection for benefit of maker, trustee to be paid commission, and afterwards executed and delivered to another person an assignment of bond and mortgage, and delivered bond and mortgage to assignee, and there was no proof that trustee ever had possession of same, *held*, assignee had beneficial title. *Wellington* v. *Heermans*, 139.

11. Unrecorded mortgage of personalty, which was made and received in good faith, but under which no possession was taken, there being no collusion between the parties nor design to give mortgagor fictitious credit, is good against assignment for benefit of creditors, and the creditors can only claim under the assignment. *Wilson* v. *Esten*, 413.

ASSUMPSIT. See ACTION, 11, 12. BAILMENT, 4. FORMER RECOVERY, 3. FRAUDS, STATUTE OF, 11. OFFICER, 1, 2.

ATTACHMENT. See ASSIGNMENT, 9. HUSBAND AND WIFE, 15. MORTGAGE, 13.

1. "Residence" in attachment laws not equivalent to domicile. Difference between the two. *Krone* v. *Cooper*, 269.

2. Property purchased by agent in his own name for undisclosed principal, cannot be seized for debt of agent unless his creditor has been misled by appearances or conduct of parties. *Reed* v. *McIlroy*, 618.

3. After debtor to defendant in attachment had been garnished by creditor of defendant, he assigned his claim to another creditor, and notice of transfer was given to debtor, when a second creditor in attachment against same defendant garnished same debtor, and both suits proceeded to judgment at same term. Funds in hands of garnishee were not sufficient to satisfy the two judgments: *Held*, that the same should be apportioned between the two judgment creditors to exclusion of assignee of debt. *Reeve* v. *Smith*, 743.

4. Chose in action is not assignable, at common law or under Illinois statute, so as to vest legal title in assignee. Such assignee will take same subject to all defences. *Id.*

5. GARNISHMENT, 625.

ATTORNEY. See EVIDENCE, 6. HUSBAND AND WIFE, 4, 5. INFANT, 7. MALICIOUS PROSECUTION, 8. PARTNERSHIP, 9. TRIAL, 6.

1. Not liable to subsequent assignee of mortgage for loss by reason of error in certificate of title given to mortgagee. *Dundee Mortgage Co.* v. *Hughes*, 197, *and note.*

2. Under statute authorizing assignment of counsel to indigent suitors, complainant was assigned to assist defendant in suit to recover from insurance company amount of policy on her husband's life; he thereupon made agreement with her for contingent fee of half amount recovered upon recovery of principal and interest; *held*, that he was entitled to half of both. *Hassell* v. *Van Houten*, 414.

3. Where two parties go together to attorney, and make statements to him in presence of each other, such statements are not confidential communications. *Lynn* v. *Lyerle*, 743.

4. Attorney who places his name under words "From the office of," on back of writ in favor of resident of another state, is liable, as endorser, for costs; although in so doing, he violated rule of court. *Morrill* v. *Lamson*, 540.

5. Requires special authority to release judgment which has not been paid or satisfied. *Rounsaville* v. *Hazen*, 269.

AWARD. See ARBITRATION.

BAGGAGE. See COMMON CARRIER, 2, 4–6.

BAILMENT. See BANKRUPTCY. CONTRACT, 5. SALE, 2, 3.

1. Where goods have been shipped to one who has not ordered them, title does not pass to consignee by delivery to carrier. *Ruhl* v. *Corner*, 743.

2. If factor have claims for advances against his principal, and it is expressly agreed that goods shall be shipped to factor to pay those advances, law makes delivery to carrier delivery to factor. *Id.*

BAILMENT.

3. If factor receives consignment of goods for sale, while goods are still property of consignor, lien of factor for previous advances will at once attach. *Id.*

4. But if, while goods are *in transitu* and at his risk, consignor parts with title, goods are no longer his, and lien of his factor will not attach, although the goods actually come into his possession. In such a case where the transferee of the title brought assumpsit instead of trover against the factor, he was only allowed to recover for the money received from sale of goods. *Id.*

5. If mortgagor in possession of personal property stores it with third person, who has no actual notice of the mortgage, which is recorded, the mortgagee who afterwards is informed of the sharing, and expresses no disapproval, is not liable to such person for storage charges, although the storage is necessary, but may maintain action against him for its conversion. *Storms* v. *Smith*, 209.

BANK. See CHECK. CORPORATION, 26. NATIONAL BANK, 1.

1. Savings bank has no general lien upon surplus proceeds of stock, held as collateral for payment of note. *Brown* v. *New Bedford Inst.*, 209.

2. S. S. deposited sum of money in bank and received certificate of deposit to the order of himself, or of E. S. (his wife). S. S. died. After his death E. S. presented certificate and drew deposit. *Held*, that certificate did not authorize payment of money to her after death of S. S., and that notice to paying-teller of death of S. S. was notice to bank. *Bank* v. *Wrightson*, 540.

3. The bank filed bill in equity to enjoin prosecution of action at law against it for the money deposited by S. S., brought by his executor; and to have certificate reformed. Evidence failed to establish case for reformation of certificate; but it was developed in proof, that part of money drawn by E. S., went directly to payment of debts and funeral expenses of S. S. *Held*, that court below committed no error in retaining bill, and under prayer for general relief, allowing bank credit for the money that went directly to pay debts and funeral charges of S. S., and for which executor had obtained credit in his administration account. *Id.*

4. Pittsburgh bank sent to New York bank, for collection, eleven unaccepted drafts, dated at various times through period of over three months, and payable four months after date. They were drawn on "Walter M. Conger, Secretary Newark Tea Tray Co., Newark, N. J.," and were sent to New York bank as drafts on company. New York bank sent them, for collection, to Newark bank, and, in its letters of transmission, recognised them as drafts on company. Newark bank took acceptances from Conger, individually, on his refusal to accept as secretary; but no notice of that fact was given to Pittsburgh bank until after maturity of first draft. At that time drawers and endorser had become insolvent, drawers having been in good credit when Pittsburgh bank discounted drafts. *Held*, that New York bank was liable to Pittsburgh bank for such damages as it had sustained by negligence of Newark bank. *Bank* v. *Bank*, 139.

BANKRUPTCY. See DEBTOR AND CREDITOR, 5.

Plaintiffs, as an accommodation to themselves, gave order to defendant directing their debtor to pay him what was due them. He collected and used the money by mingling it with his own; and in a few days afterwards was adjudged a bankrupt. After his discharge, in action to recover money, court below found that there was no evidence tending to show fraudulent intent. Jury found that when order was given, plaintiffs told defendant "to keep and use the money until they called for it." *Held*, that defendant's duty was that of bailee without hire; that his use of the money was a conversion of it; that debt was "created by fraud," and not discharged. *Hammond* v. *Noble*, 619.

BASTARDY. See CRIMINAL LAW, III. DESCENT, 1.

BENEFICIAL SOCIETY. See INSURANCE, 18, 20.

BIBLE. See SCHOOL, 1, 2.

BILL OF LADING. See COMMON CARRIER, 9.

G. Bros., common agents for sale of fertilizers of Z. & Sons and S., L., K. & Co., shipped through mistake cotton received in payment of fertilizers of Z.

BILL OF LADING.
& Sons, to S., L., K. & Co., and the bills of lading were also delivered to them; they sold the cotton and applied proceeds to payment of indebtedness of G. Bros. to them. Subsequently, G. Bros. discovering their mistake, sent to Z. & Sons an order on S., L., K. & Co. for the cotton. Demand having been made and delivery refused, *Held*, that plaintiffs could maintain trover for cotton, notwithstanding Maryland Act of 1876, ch. 262. *Seal* v. *Zell*, 796.

BILLS AND NOTES. AGENT, 1, 2. APPORTIONMENT. BANK, 4. CONTRACT, 4. DURESS, 2. EVIDENCE, 14, 15. EXECUTORS AND ADMINISTRATORS, 2, 3. INTEREST. SET-OFF, 3. SUBROGATION, 1.

I. *Form.*

1. Though draft contains direction to charge sum drawn for to certain account, it is still a negotiable bill of exchange, not payable out of a particular fund, and does not constitute an assignment of the fund. *Whitney* v. *Bank*, 270.

2. Note containing clause, "the drawers and endorsers * * * expressly agree that the payee or his assignees may extend the time of payment thereof from time to time, indefinitely, as he or they may see fit," is non-negotiable. *Glidden* v. *Henry*, 716, *and note.*

3. Note in ordinary form, given by corporation, had on it when produced in court a paper seal. No vote of corporation authorized the seal; note did not purport to be under seal; seal was not corporate seal, and treasurer of corporation did not admit putting it on note. *Held*, that seal must be disregarded as "mere excess." *Mackay* v. *Church*, 680.

II. *Rights of parties.*

4. Material alteration of note avoids same as to maker not consenting even in hands of *bona fide* holder. *Horn* v. *Bank*, 72.

5. Substituting another payee for original payee, with knowledge and consent of but one of two makers, releases the other. *Id.*

6. Note not avoided as to maker by material alteration made in accordance with, but some time after, agreement between maker and payee, and without knowledge of maker. *Wardlow* v. *List*, 209.

7. Addition of signature of surety to promissory note, without consent of maker, does not discharge him. *Mersman* v. *Werges*, 72.

8. Mortgage of husband and wife of her land, for accommodation of partnership of which husband is member, and as security for note made by husband to partner, and endorsed by partner for same purpose, and to which note partner, before negotiating it, adds wife's name as maker, without consent or knowledge of herself or her husband, is not thereby avoided as against one who, in ignorance of alteration of note, lends money to partnership upon security of note and mortgage. *Id.*

III. *Endorsement.*

9. Where holder and owner of two notes endorsed in blank, one over-due and other not, gave them to agent to receive payment only, and agent sold them to innocent person without notice, *held*, that title only passed to note not due. *Towner* v. *McClelland*, 140.

10. That assignee takes note secured by mortgage by assignment before maturity, free from all defences at law, does not protect mortgage against equitable defences. *Id.*

BOND. See EQUITY, 13. NEGOTIABLE INSTRUMENT, 1. OFFICER, 3. REMOVAL OF CAUSES, 6.

BRIDGES. See HIGHWAYS, STREETS, BRIDGES.

BROKER.

If purchaser, who was spoken to by brokers, had abandoned all idea of the trade, and they had no influence in bringing it about, they would not be entitled to commissions, although purchaser may subsequently have bought from owner. *Doonan* v. *Ives*, 341.

BURDEN OF PROOF. See ASSIGNMENT, 8. COMMON CARRIER, 7. HUSBAND AND WIFE, 17, 23, 24. NEGLIGENCE, 14.

BURGLARY. See CRIMINAL LAW, IV.

CASES AFFIRMED, COMMENTED ON, OVERRULED, ETC.

Ballard *v.* Tomlinson, 26 Ch. Div. 194, differed from. *Snow* v. *Whitehead*, 230.

Commonwealth *v.* Thompson, 6 Mass. 134, criticized. *Commonmealth v. Pierce*, 117.

Escanaba *v.* Chicago, 107 U. S. 678, commented on. *Cardwell v. Bridge Co.*, 272.

Hart *v.* Western Union Tel. Co., 320. Reversed, 604.

Kansas Pacific Railway Co. *v.* Lydia H. Sutter, 16 Kas. 568, referred to and distinguished; Perry, as Administrator, &c. *v.* St. Joseph & Western Railway Co., 29 Kas. 420, referred to and commented upon. *Limekiller v. Railroad*, 269.

Meck *v.* Penn Co., 38 Ohio St. 632, followed and approved. *Hart* v. *Deverux*, 214.

Miller *v.* Brass Co., 104 U. S. 350, principles of reiterated and explained. *Maher* v. *Harwood*, 148.

Nicklin *v.* Williams, 10 Ex. 259; Backhouse *v.* Bonomi, E., B. & E. 622, 9 H. L. Cas. 503; Whitehouse *v.* Fellowes, 10 C. B. (N. S.), 765, discussed; Lamb *v.* Walker, 3 Q. B. Div. 289, overruled. *Mitchell* v. *Darley Main Colliery Co.*, 432.

Pinnel's Case, 5 Rep. 117 a, and Cumber *v.* Wayne, 1 Str. 426, followed. *Foakes* v. *Beer*, 21.

Railroad Co. *v.* Commissioners, 35 Ohio St. 1, distinguished. *Commissioners* v. *Railroad*, 802.

Spangler *v.* Cleveland, 35 Ohio St. 469, approved and followed. *Watterson* v. *Bradley*, 797.

The North Carolina, 15 Pet. 40, distinguished. *The Charles Morgan*, 539.

Thompson *v.* Herman, 4 Wis., distinguished. *Mathews* v. *Case*, 146.

Thorogood *v.* Bryan, 8 C. B. 114, disapproved. *N. Y., L. E. & W. Co.* v. *Steinbrenner*, 684.

Transfer Co. *v.* Kelley, 36 Ohio St. 86, followed; Thorogood *v.* Bryan, 8 C. B. 115, disapproved. *St. Clair Street Railway Co.* v. *Eadie*, 706.

Whitcomb *v.* Whiting, approved and explained; Channell *v.* Ditchburn, 5 M. & W. 494, and Goddard *v.* Ingram, Q. B. 839, disapproved. *Parker* v. *Butterworth*, 77.

CERTIORARI. See CORPORATION, 13.

CHAMPERTY. See TORT, 5.

CHARITY. See WILL, 7, 8.

1. House of Refuge, being a charitable corporation, is not liable for damages for assault committed by its officer on inmate. *Perry* v. *House of Refuge*, 541

2. Where testator devised all his real and personal estate to one as trustee, to be sold and converted into money when so requested by incorporated religious society, and applied in establishing an orphan asylum, to be under direction and control of such society, *held*, that devise in favor of charity was devise of money and not of land, and was such as courts of Illinois will uphold. *Germain* v. *Baltes*, 747.

CHARTER-PARTY. See ADMIRALTY, 1.

CHATTEL MORTGAGE. See MORTGAGE, II.

CHECK.

Holder of, cannot sue bank for refusal to pay on presentation, though drawer have sufficient on deposit to meet it. *Creveling v. Bank*, 72.

CITIZENSHIP. See REMOVAL OF CAUSES.

CITY. See MUNICIPAL CORPORATION.

COLLATERAL SECURITY. See SURETY, 1, 5.

COMMON CARRIER. See ACTION, 10. AGENT, 5–9. CONTRACT, 5. NEGLIGENCE, 5. TELEGRAPH, 7. TELEPHONE, 1, 3.

COMMON CARRIER.

1. Limitation of time in excursion tickets sold at reduced rate, valid. *Pennington* v. *Railroad Co.*, 209.

2. Where passenger who checked baggage on through ticket with coupon for each road, finds it lost on arrival at his destination, he can hold last road responsible. *Railway* v. *McIntosh*, 141.

3. If railroad ticket seller deliver to passenger ticket with hole in it, assuring him that it is good, passenger may sue company for his expulsion by conductor for refusing to pay additional fare. *Murdock* v. *Railroad*, 271.

4. Railway company's liability for passenger's ordinary travelling baggage, does not cover such articles as blankets, books, &c. *McCaffrey* v. *Railway Co.*, 175, *and note.*

5. When such goods remain at station at which passenger alights, but it does not appear that company has charged or is entitled to charge for storage, company is not liable as warehouseman. *Id.*

6. Baggage and liability of carrier therefor, generally. *Id., note.*

7. Although burden of proof is on plaintiff to show that injury was occasioned by negligence of carrier, yet he makes out *prima facie* case by showing that accident happened through failure of some of means used by carrier in making transit. *B. & O. Co.* v. *Mahone*, 541.

8. If one has purchased ticket and was crossing track by and under direction of ticket agent, for purpose of taking train, he is entitled to all rights and protection of passenger. *Id.*

9. Stipulation in bill of lading as to value of goods, carrier having no other knowledge thereof, and charge for transportation being based upon such valuation, estops shipper from claiming more when goods are lost by negligence of carrier's servants. *Graves* v. *Railroad*, 73. See *infra*, 17.

10. Where excursion ticket is sold by railroad company at reduced rate, and upon special conditions printed on back of ticket; one of which is that ticket shall be used "for a continuous trip" only, and "is not good to stop off," passenger is bound to take through train and cannot stop off. *Johnson* v. *P. W. & B. Co.*, 541.

11. In absence of proof that gatekeeper had authority to vary contract, passenger cannot get rid of its conditions, by showing that he took the wrong train, relying on wrong direction given by gatekeeper. *Id.*

12. Plaintiff's intestate, who in pursuance of contract for carriage of horses, and in accordance with custom in such cases, was riding in same car with horses in order to care for them, was killed in collision caused by defendant's gross negligence. *Held*, that he would not be deemed to have been guilty of contributory negligence. *Lawson* v. *Railway Co.*, 744.

13. Where it is customary for some person to ride in same car with horses, to care for them, it would seem to be within general authority of conductor of train to grant permission so to ride. *Id.*

14. Passenger on railway is responsible for fare of child under his charge, and upon refusal to pay same may, together with child, be ejected from train, although he had paid his own fare. *Railroad* v. *Hoeflick*, 342.

15. If conductor finds child sitting beside female passenger, and knows father of child is in car, or could know upon proper inquiry, he has no right to hold female responsible for child's fare. *Id.*

16. Passenger wrongfully ejected from train is entitled to such damages as jury judge to be proper compensation for unlawful invasion of his rights, and for injury to his person and feelings. He is not entitled to punitive damages, which require fraud or evil intent or oppression, if ejection was in discharge of supposed duty or without any bad intention. *Id.* See *infra*, 25.

17. Where contract of carriage signed by shipper is fairly made with railroad company, agreeing on valuation of property carried, with rate of freight based on this valuation, contract will be upheld even in case of loss or damage by negligence of carrier. *Hart* v. *Railroad Co.*, 140. See *ante*, 9.

18. Passenger who, through negligence of one conductor, is not furnished with stop-over ticket, and who, on attempting to resume journey, is required by second conductor to pay additional fare or leave the train, may elect to leave train, and may recover not only additional fare subsequently paid, but all his

COMMON CARRIER.

damages which are direct and natural consequence of fault of first conductor. *Young* v. *Railway Co.*, 141.

19. Railway company receiving passenger in car before making up train, will be liable for injury to such passenger, resulting from negligence in making up train. *Railroad Co.* v. *Martin*, 270.

20. Where passenger in overcrowded coach was informed, by conductor's announcement, that another car had been added in front, and adding of car had been felt when it was pushed back, and it was found in proper position, though in fact not securely coupled, so that as passenger was stepping on to it, it moved forward suddenly, causing him to fall, whereby he was injured, *Held*, that passenger was not chargeable with want of ordinary care. *Id.*

21. Where trains of one railway corporation are made up on track of another and by its employees, and the cars belong to other companies, if use of cars and tracks and labor is to enable first corporation to perform its duty as common carrier, passenger injured may sue that corporation. *Id.*

22. Stipulation in shipping contract, voluntarily and understandingly entered into by shipper of livestock, that in consideration of reduced rate any claim for damages shall be made in writing verified by affidavit of shipper or his agent, and delivered to general freight agent of carrier, at his office, within five days from time stock is removed from cars, will bind shipper, and is not void as contrary to law or public policy. *Black* v. *Railway Co.*, 270.

23. Where party of mature years and sound mind, able to read and write, without imposition or artifice, deliberately signs written agreement without informing himself of contents, he will be bound by it. *Id.*

24. Purchaser of limited ticket over several connecting lines of railroad is not bound to make his journey continuous over all, but only over each coupon of ticket; and over last within time limited, but if last day be Sunday, ticket cannot be refused afterwards, at least when offered on first train after expiration of time. *Railway* v. *Dean*, 271.

25. Such a ticket expiring on Sunday, and there being no train that day, passenger offered ticket on train next day. It was refused, and passenger, under protest and threat of ejection, paid his fare to further station, and there for want of money, was put off and walked to his destination. *Held*, that extra fare paid, humiliation of being put off train, and inconvenience of reaching destination by walking, were proper elements of damage. *Id.*

26. In selling coupon ticket over successive lines of road, railway company, in absence of express agreement, acts only as agent for roads beyond its own. *Penna. Railroad Co.* v. *Connell*, 619.

27. Where conductor of railway company, under instructions, refuses to accept ticket issued by another company as agent of former, and demands full fare, passenger, if his ticket was issued by authority, may pay fare again and recover of company requiring payment sum paid, as for breach of contract, or he may refuse to pay, and leave train when so ordered by conductor, and recover of company all damages sustained in consequence of expulsion; but if he refuses to leave, he cannot recover for force used by conductor in putting him off, when no more force is used than necessary, and expulsion is not wanton or wilful. *Id.*

COMMON LAW. See PARTICULAR WORDS AND PHRASES, 1.

CONDITIONAL SALE. See DEBTOR AND CREDITOR, 1, 2.

CONFESSION. See CRIMINAL LAW, 13.

CONFLICT OF LAWS. See ACTION, 7. ASSIGNMENT, 6, 9. CORPORATION, 14, 17, 30. DEBTOR AND CREDITOR, 3. DESCENT, 2. EXECUTORS AND ADMINISTRATORS, 2. GUARDIAN AND WARD, 1. LIMITATIONS, STATUTE OF, 1, 2. MORTGAGE, 12. SUNDAY, 2, 3.

1. Action of tort for diverting waters of natural stream in Massachusetts, and preventing same from coming to plaintiff's mill, in adjoining state, may be maintained in Massachusetts. That certain percentage of water was returned to stream may be considered in estimating damages. *Manville Co.* v. *Worcester*, 480.

CONFLICT OF LAWS.

2. If assignment is made in Massachusetts between parties domiciled there, of policy of insurance issued by company of another state, but delivered in Massachusetts, questions of validity of assignment, and capacity of parties to contract are to be determined by laws of Massachusetts. *Mutual Co.* v. *Allen*, 480.

CONSIDERATION. See CONTRACT, 4. FRAUDS, STATUTE OF, 9. MORTGAGE, 24. NOTICE, 4. TELEGRAPH, 2.

CONSPIRACY. See ACTION, 8, 9. CONSTITUTIONAL LAW, 16.

CONSTITUTIONAL LAW. See CRIMINAL LAW, 5, 6. INTERNATIONAL LAW, 2. SCHOOL, 2. TAXATION, 3. UNITED STATES, 4, 5. WILL, 3, 4.

I. *Powers of Legislature.*

1. One state cannot tax capital stock of corporation of another state, which runs a ferry between the two. *Ferry Co.* v. *Pennsylvania*, 414,

2. Tonnage tax on oyster boats in certain localities, not unconstitutional, as an attempt to regulate inter-state commerce. *Johnson* v. *Loper*, 73.

3. Nor is license fee upon such boats obnoxious to requirement of state constitution, that property shall be assessed under general laws and by uniform rules, according to its true value. *Id.*

4. Legislature can pass healing acts which do not impair obligation of contracts nor interfere with vested rights. *Green* v. *Abraham*, 273.

5. What legislature might have dispensed with or made immaterial by previous statute, it may so act upon by subsequent one. *Id.*

6. Bringing of suit vests no right to particular decision. Case must be determined on law as it stands at time of judgment. *Id.*

7. Power of congress to regulate inter-state commerce is exclusive. Its inaction gives states no right to act. *Hardy* v. *Railway Co.*, 73.

8. *Query:* Has not congress so legislated by act of June 15th, 1856, sect. 5258, Rev. Stat., authorizing all railroad companies to transport passengers and freight from state to state, &c.? *Id.*

9. Clause of constitution providing that "all laws of a general nature shall have a uniform operation throughout the state," is mandatory. *Ex parte Falk*, 342.

10. Statute providing punishment for act *malum in se* wherever committed, cannot be made local on ground that inhibited act is greater evil in large city than in other parts of state. Instance, having burglar's tools in possession. *Id.*

11. Legislature may impose duty on owners of dams to place therein suitable fishways, and the owner or user cannot by occupancy or user for any length of time acquire prescriptive right against the public. *Parker* v. *People*, 414.

12. Act allowing municipal corporations to appeal without giving bond, as in other cases, is not unconstitutional, as being either local law or special legislation. *Holmes* v. *Mattoon*, 273.

13. Public municipalities, including school districts, and all officers sueing for or defending rights of state, or acting for or instead of state in respect of public rights, may be authorized to sue without payment of costs, or conforming to all requirements imposed upon other suitors. *Id.*

14. Act of congress of August 3d, 1882, imposing upon vessel owners duty of fifty cents for every passenger not a citizen of this country, brought from foreign port into U. S. port, is a valid exercise of power to regulate commerce with foreign nations. *Head-money Cases*, 210.

15. This duty is designed to mitigate the evils of immigration, and it is not a tax subject to limitations imposed by constitution on general taxing power of congress. *Id.*

16. Right to acquire homestead is a right secured by constitution and laws of United States, within sect. 5508 Rev. Stat., making amenable to penalty those conspiring against free exercise of such rights. *United States* v. *Waddell*, 73.

17. Irrepealable charter of railroad company gave it power to take lands by condemnation, and provided for appeal by land-owner, from award of damages, to certain court. *Held*, that general act which took away right to appeal to that court, and gave appeal to another court on same terms and conditions, and with same mode of trial, was not unconstitutional. *State* v. *Weldon*, 745.

CONSTITUTIONAL LAW.

18. An Indian separated from his tribe and residing among white citizens of a state, but not naturalized, or taxed, or recognised as a citizen, either by the United States or the state, is not a citizen of United States, within 1st sect. of 14th art. of amendment to United States constitution. *Elk* v. *Wilkins*, 73.

19. Keeping sidewalks in repair is referable to same power as constructing new improvements, and cannot be required to be done by abutting owner or occupant, at his own expense, either by exercise of police power, or by fines and penalties prescribed by ordinance, or by direct legislative action. *City* v. *Crosby*, 414.

20. City has not constitutional power to require owner or occupant of premises to keep sidewalk and gutters in front thereof free from snow and ice, or to sprinkle same with ashes or sand where snow and ice cannot be removed without injury to pavement, and inflict fine for neglect or failure so to do. *City* v. *O'Brien*, 414.

21. Sidewalk in city is portion of public highway. *Id.*

22. In absence of constitutional restraints, regulation of liquor traffic is wholly within legislative control. Legislature may empower municipal corporations to entirely prohibit it within their limits. But neither counties, cities, nor towns can impose tax upon privilege not authorized by legislature. *Drew County* v. *Bennett*, 272.

23. State statute authorizing any person to erect and maintain on his own land a water-mill and mill-dam upon and across any stream not navigable, paying to owners of lands overflowed damages assessed in judicial proceeding, does not deprive them of their property without due process of law, in violation of Fourteenth Amendment of Constitution of United States. *Head* v. *Manufacturing Co.*, 272.

24. Whether erection and maintenance of mills under such a statute can be upheld as a taking of private property for public use under right of eminent domain, not decided; but, *held*, that such a statute, considered as regulating manner in which rights of proprietors of lands adjacent to a stream may be enjoyed, with due regard to interests of all and to public good, is within constitutional power of legislature. *Id.*

25. Commercial power of Congress is exclusive only when subjects of it are national; when they are local in nature or operation, or constitute mere aids to commerce, the states may provide for their regulation and management until Congress intervenes and supersedes their action. *Cardwell* v. *Bridge Co.*, 271.

26. Clause in Act of Sept. 9th, 1850, admitting California into Union, which declares "that all the navigable waters within the said state shall be common highways and forever free, as well to the inhabitants of said state as to the citizens of the United States, without any tax, imposts or duty therefor," does not lessen power of the state over such waters; notwithstanding it, state can authorize construction of bridges over navigable streams to promote public convenience. *Id.*

27. By terms of Virginia Funding Act of March 30th, 1871, and the issue of bonds and coupons in virtue of the same, a contract was made between every coupon holder and the state that such coupons should "be receivable at and after maturity for all taxes," etc., due the state; the right of coupon-holder, under which, was to have his coupons received for taxes when offered: any act of state which forbids receipt of these coupons for taxes is violation of contract, and void as against coupon-holders. *Poindexter* v. *Greenhow*, 481.

28. Action brought by taxpayer, who has duly tendered such coupons in payment of his taxes, against tax collector, who, acting under void law of legislature, having refused such tender, proceeds by seizure and sale of property of plaintiff, to enforce collection of such taxes, is not an action against the state within Eleventh Amendment to Constitution of United States. *Id.*

29. Act entitled "an act to authorize independent school-districts to borrow money and issue bonds therefor, for the purpose of erecting and completing school-houses; legalizing bonds heretofore issued, and making school-orders draw six per cent. interest in certain cases," does not violate constitutional provision that "every act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title." *Ackley School District* v. *Hall*, 272.

CONSTITUTIONAL LAW.

30. Under ordinance city of Cleveland improved Kinsman street by grading, draining and paving same. Cost of improvement was assessed upon lots bounding and abutting thereon. The culvert afterwards broke down. City, by another ordinance, provided for construction of new culvert at another point on street, in place of old one, cost of same to be assessed on property bounding and abutting on Kinsman street, within termini of original improvement, but not bounding on culvert. *Held*, that this additional assessment was not authorized by law. *Watterson* v. *Bradley*, 797.

31. CONSTITUTIONAL REGULATIONS OF LEGISLATIVE PROCEEDINGS, 153.

II. *Powers of the Judiciary.*

32. While state courts can exercise no jurisdiction in cases peculiarly cognisable in admiralty, yet the saving in the United States statute, to suitors in all cases, of "the right of a common-law remedy where the common law is competent to give it," permits of a proceeding in state court, for injury to dredge, by attachment, although this remedy did not exist at common law, but has been conferred by statute. *Walter* v. *Kirstead*, 141.

III. *Eminent Domain.* See *ante*, 23.

33. General grant of legislative power in state constitution does not authorize legislature, by right of eminent domain or of taxation, to take private property without owner's consent, for any but public object; as by authorizing city to issue its bonds by way of donation to private manufacturing corporation. *Cole* v. *La Grange*, 272.

CONSUL. See AGENT, 1, 2.

CONTEMPT. See MALICIOUS PROSECUTION, 4.

1. Definition of direct and constructive contempt of court. *In re W. W. D. H.*, 74.

2. D. executed his recognisance to appear in court at certain time, and submit to trial on criminal charge pending against him. He did not so appear, but absented himself from the county where the court was held. *Held*, that he could be punished for contempt by fine or imprisonment. *Id.*

CONTRACT. See ACTION, 11–13, 15. AGENT, 6–9. COMMON CARRIER, 22, 23. CONFLICT OF LAWS, 2. EQUITY, 7–9. FRAUD, 1, 2. FRAUDS, STATUTE OF, 12. GUARANTY, 1. HUSBAND AND WIFE, 22–27. MORTGAGE, 23–25. SUNDAY, 1–3, 6. TELEGRAPH, 2, 3.

1. Statute provided that City Board of Public Works might hire employees subject to approval of their compensation by council when it exceeded $1000 per annum. *Held*, that mere non-action by council would not defeat agreement made by board. *Mathewson* v. *Tripp*, 415.

2. When anything is left to be settled in respect to offer by mail or telegraph, acceptanee of offer by telegraphing will not complete contract where dispatch does not reach its destination. *Haas* v. *Myers*, 415.

3. In such a case where dispatch did not reach its destination, and second dispatch was sent and received on same day that sender and third party had concluded the purchase contemplated to have been made by sender and receiver, *held*, that receiver's offer, on his arrival the next day, to pay his share of price, was too late. *Id.*

4. After note had matured, but was still held by payee, two sons of maker, in order to induce payee not to pass note into hands of third person, and to give further time for payment, placed their names under that of their father. *Held*, 1st. That there was good consideration to support contract, which was to pay amount of note on demand. 2d. That contract was not within Statute of Frauds. *Frech* v. *Yawger*, 680.

5. A mower company, owner of certain mowing machines, consigned and forwarded them to D., on contract, under which D. was to pay the freight and sell them for specified commission, and account to company for them at specified price. *Held*, 1. That contract did not change title; 2. D. had such special property in machines, as to enable him to sue carrier for wrongful act to property, and recover his own damages and such as accrued to company as general

CONTRACT.
owners; 3. A sale of property after damage had accrued, would not transfer claim to damages. *Railroad Co.* v. *Mower Co.*, 74.

6. By written memorandum A. agreed to buy, and the B. company to sell, 1000 tons of old rails, delivery to be before August 1st, and also 200 to 600 tons for delivery between August 1st and October 1st. Contract was dated January 31st, 1880, and was signed by vice-president for company, and he had full authority to make it. On February 17th vice-president wrote to A. inclosing minute of resolution, purporting to have been passed at meeting of directors of company on February 16th confirming contract, but specifying 2000 pounds, as ton contemplated. On February 28th A. replied to this letter, saying that the sale was "an absolute and final unconditional sale," and that number of pounds per ton was to be 2240. This was number understood between the parties at time of making contract. No reply was made to last letter, which ended with "we hope to hear from you at your early convenience," until June 14th, when company wrote tendering 1000 tons of 2240 lbs. By that time price of old rails had fallen. *Held*, that contract was in full force, and that company was not estopped from setting it up against A. *Wheeler* v. *Railroad Co.*, 680.

7. Validity of Contracts in Restraint of Trade, 217, 281.

CONVERSION. See Charity, 2.

COPYRIGHT.
1. Statute appointing state reporter, authorizing secretary of state to contract for publication of his reports and giving to contractor exclusive right to publish same, confers no right to copyright, nor any exclusive right to publish, opinions of court. *Banks* v. *Manchester*, 519 *and note.*

2. *Quære*, Whether state, through its reporter, can secure copyright in opinions of its judges. *Id.*

3. Copyright of legal works, generally. *Id., note.*

CORPORATION. See Bills and Notes, 3. Constitutional Law, 17. Equity, 13. Malicious Prosecution, 12. Married Women as Corporators, p. 366. Municipal Corporation. Receiver, 2. Removal of Causes, 2, 3. Taxation, 2–4.

1. There is no liability on subscription to stock of corporation with fixed capital, until whole amount is subscribed. *Temple* v. *Lemon*, 481.

2. Such subscriber cannot be held individually liable for debt of corporation, unless he has estopped himself from alleging that whole of fixed capital stock was never subscribed. *Id.*

3. Cannot defend itself, in action for tort done by it, on ground that business in prosecution of which tort was done was *ultra vires*. *Railway Co.* v. *Haring*, 681.

4. Agent of railroad company ejected, with unnecessary violence, passenger from cars. *Held*, the company was liable for injury to passenger. *Id.*

5. President of, by virtue of his office, cannot encumber its property by mortgage or judgment confessed for money borrowed. *Stokes* v. *Pottery Co.*, 74.

6. His being owner of nearly all its capital stock, and its president, treasurer and active manager, and being accustomed to borrow money for company's use, will not give him this power. Powers of president generally. *Id.*

7. Corporation having become insolvent, its receiver, as representative of creditors, can object that confessed judgment against corporation, was not so obtained as to bind it. *Id.*

8. Cause of forfeiture of franchise can only be taken advantage of or enforced by direct proceeding for that purpose. *Attorney-General* v. *Railroad Co.*, 619.

9. Where corporation is absolutely dead in law, court of equity has jurisdiction to enjoin threatened acts by persons assuming to act on behalf of, and in name of dead corporation. *Id.*

10. And if valid corporation assumes to exercise licenses or powers by virtue of invalid ordinance of municipal corporation, or in excess of authority legally conferred upon it, court of equity may restrain it. *Id.*

11. Is liable to any one who has accepted its stock certificate and acted thereon to his injury, to extent that loss has actually been incurred. *Bank* v. *Baltimore*, 543.

CORPORATION.

12. If charter provides that corporation shall cease to exist if certain thing is not done in certain time, question whether corporation has ceased to exist can be judicially determined only in suit to which Commonwealth is party. *Briggs* v. *Canal Co.*, 75.

13. Gas companies having right to use streets of city for their pipes may, by *certiorari*, challenge legality of municipal proceedings designed to give similar rights to rival companies, and individuals owning soil of street may also question claim of a gas company to lay its pipes therein. *People's Co.* v. *Jersey City*, 75.

14. Foreign insolvent corporation, if still in existence, can be compelled by mandamus or bill in equity to collect its unpaid subscriptions wherever stockholders may reside; and if it has ceased to exist, receiver should be appointed, and courts of other states would recognise right of receiver, same as they would of corporation itself, if still in existence, to prosecute actions at law, for recovery of unpaid subscriptions. *Patterson* v. *Lynde*, 542.

15. Unpaid subscriptions are trust fund for payment of debts of corporation, which is the trustee. When, therefore, corporation has ceased to exist, then court of equity will take jurisdiction and wind up its affairs. *Id.*

16. To enforce liability of stockholder for his unpaid stock, it is indispensable that corporation (or if it has ceased to exist, all its stockholders and creditors) should be before court. *Id.*

17. While foreign receiver should not be permitted, as against claims of resident creditors, to remove assets of debtor, yet he may be allowed to do so when resident creditors have no fixed legal claim to the property; so, when creditors have not fixed liens thereon, he may sue for unpaid subscriptions, and collect same, subject to order of court appointing him. *Id.*

18. If officer of private corporation performs an illegal act, or such act (*e. g.* excluding colored persons from omnibuses) is performed by his orders where he has authority to control servant doing act, and injury results therefrom, officer will be liable in damages to injured person, although corporation may also be liable. *Peck* v. *Cooper*, 542.

19. Retaining of servant of company after knowledge is brought home to officer or agent of company of his misconduct, resulting in personal injury to another, has been held evidence characterizing *animus* of those controlling company, and as ingredient in measure of damages. *Id.*

20. Where act incorporating railroad company authorized a mortgage of its "charter and works" and exempted it from certain taxation, *held*, after foreclosure under such mortgage and reorganization of company, that the exemption from taxation did not extend to reorganized company. *Railroad Co.* v. *Commissioners*, 210.

21. Trustees of, who are liable under statute, in consequence of failure to publish and file report of capital and debts within twenty days after first of year, for "all the debts of the company then existing," are not liable for amount of judgment recovered in suit in tort against company before first of year in question. *Chase* v. *Curtis*, 342.

22. Although existence of corporations voluntarily organized under general statutes, cannot be questioned collaterally, yet if they have resulted from fraudulent combinations of individuals to procure powers, under circumstances and for purposes not within legislative intent, who under shelter of their charter are about to exercise powers oppressive to an individual, they may be restrained by private suit of those injured, or about to be. *Neimeyer* v. *Railroad*, 75..

23. When proposed act of railroad company in taking land for its track is unauthorized, it may be restrained by injunction. *Id.*

24. By-law of religious society provided for the dropping from its list of any member ceasing to regularly worship with the society, or failing to contribute to support of its public worship for one year. *Held*, that vote of society, after hearing, was necessary. *Gray* v. *Society*, 273.

25. By-law of such society provided that object for which special meeting was called, must be stated. Another by-law provided that new member must be approved by vote of society. *Held*, that elections of new members at special

CORPORATION.

meeting warrant for which contained no article for admission of new members, but contained general article, "To transact any other business that may legally come before said meeting," were invalid. *Id.*

26. Where transaction with incorporated banking association properly pertains to business of such association, neither abuse or disregard of his authority by managing officer or agent, nor his fraud or bad faith will be permitted to be shown in defence of such bank in action against it by innocent party, growing out of such transaction. *Bank* v. *Blakesley*, 343.

27. Creditor defrauded by misrepresentations of real capital of bank has remedy in tort against all who participated in fraud, but entire body of creditors who have not suffered from alleged fraud cannot recover from entire body of stockholders who have taken no part in it. Even where suit is prosecuted for creditors by receiver, pleadings should set forth facts entitling each creditor to action; and it is essential that creditor should have acted on the misrepresentation to his injury. *Fouche* v. *Brower*, 141.

28. Steamship company transferred its ships and other property to another company organized to succeed it, and officers in old company became officers in new, and business went on under their direction. After transfer, man was killed by collision between canal boats and one of steamships transferred to new company. His widow sued and obtained judgment against old company. *Held*, that property transferred to new company could not be subjected in equity to payment of this judgment. *Gray* v. *Steamship Co.*, 681.

29. Secretary of joint stock company issued share certificate signed by himself and under seal of company (which had been improperly affixed), and with forged signature of a director. It was duty of secretary to have transfers registered, to procure preparation, &c., of certificates and to issue them. Transferee of person to whom forged certificate was issued, applied to company to have shares registered in his name and was refused. *Held*, that transferee was entitled to recover value of shares from company. *Shaw* v. *Mining Co.*, 90, *and note.*

30. Fire insurance company incorporated in Pennsylvania is entitled to bring in Maryland court, for use of receiver of such company appointed in Pennsylvania by decree which declared the company dissolved, but referred to the act which authorized the decree, and which act authorized the appointment of a receiver, "with power to prosecute and defend suits *in the name of the corporation*, or otherwise, and to do all other acts which might be done by such corporation, if in being, that are necessary for the final settlement" of its unfinished business, an action to recover from Maryland policy holder assessment upon his premium note, where the suit is not brought by receiver in his official capacity. *Lycoming Co.* v. *Langley*, 210.

CORPSE.

1. Administrator has no such property in body of decedent as will enable him to recover damages for its mutilation through negligence of railroad. *Griffith* v. *Railroad*, 586, *and note.*

2. *Semble.* He may, however, recover damages in such case for destruction of the apparel on such body. *Id.*

3. Rights of living persons over dead bodies. *Id., note.*

COSTS. See ATTORNEY, 4. ERRORS AND APPEALS, 2. INFANT, 4.

COUNTY. See MUNICIPAL CORPORATION.

COURTS. See COPYRIGHT. JUDGMENT, 2. MANDAMUS, 2. WILL, 4.

Decree of Orphans' Court, granting letters of administration, cannot be questioned collaterally. *Plume* v. *Howard Ins.*, 75.

CREDITORS' BILL. See UNITED STATES COURTS, 3.

CRIMINAL LAW. See CONSTITUTIONAL LAW, 10. EVIDENCE, 12. INTOXICATING LIQUORS, 1. TRIAL, 6. WITNESS, 1, 2.

I. *Generally.*

1. In Kansas coercion of wife is not presumed, but is a question of fact for jury. *State* v. *Hendricks*, 76.

CRIMINAL LAW.

2. Person on trial for assault with intent to murder, is competent to testify as to purpose for which he procured instrument with which he committed assault. *Fenwick* v. *State*, 745.

3. Former conviction is bar to any offence of which defendant might have been convicted under indictment and proof in first case. Instance, several different sales of liquor. *State* v. *Nunelly*, 76.

4. At trial testimony of witness, identifying defendant by his voice, whom witness has heard speak only once before occasion of commission of offence charged, which was after dark, is competent. *Commonwealth* v. *Hayes*, 543.

5. Person sentenced to imprisonment for infamous crime, without having been presented or indicted by grand jury, as required by Fifth Amendment of Constitution United States, is entitled to discharge on *habeas corpus* from Supreme Court United States. *Ex parte Wilson*, 481.

6. Crime punishable by imprisonment for term of years at hard labor, is an "infamous crime" within this amendment. *Id.*

7. In separate trial of one of two persons jointly indicted for murder, other defendant, even while indictment is still pending against him on plea of not guilty, may, with his own consent, be called as witness against co-defendant. *State* v. *Barrows*, 142.

8. "Reasonable doubt," definition of, and instruction of jury as to what proof of guilt the law requires. *State* v. *Rounds*, 142.

9. Prisoner is in jeopardy from time that jury is impannelled and sworn in court of competent jurisdiction upon sufficient indictment; and entry of *nol pros.*, or discharge of juror, after that, without his consent, operates as an acquittal, except in cases of overruling necessity, as death or illness of judge or juror, or inability of jury to agree on verdict. *Whitmore* v. *State*, 274.

10. At common law court trying party for crime committed within its jurisdiction, will not investigate manner of his capture in foreign state or country. *Ker* v. *People*, 142.

11. Fugitive from justice guilty of offence for which he is subject to extradition, has no asylum in foreign country. When extradited he cannot be tried for any other offence than that for which he has been extradited, without first being afforded an opportunity to return. But this doctrine does not apply when he has been brought back forcibly; and for his illegal and forcible removal from foreign country, the country alone can complain. *Id.*

12. Where there is no extradition treaty no obligation to surrender criminals exists; but as matter of comity between friendly nations, great offenders are usually surrendered on request. *Id.*

13. Confession of prisoner with proof that offence was actually committed by some one, will warrant conviction. *Melton* v. *State*, 273.

14. Defendant cannot be convicted upon testimony of partakers in crime, whether his guilt be in same degree or not, unless corroborated by evidence to connect defendant with commission of offence; corroboration is not sufficient, if it merely prove *corpus delicti* and circumstances thereof. *Id.*

15. Court will reverse judgment of conviction, in case of felony, where evidence on which it is based is all circumstantial and of unsatisfactory character. Province of jury and duty of court. *Mooney* v. *People*, 274.

II. *Assault.* See *ante*, 2.

16. Where assault and battery complained of were part of one preconcerted affray, evidences of other fights engaged in by defendants in execution of their unlawful purpose, is admissible. *Rhinehart* v. *Whitehead*, 746.

17. One who goes to place with others with intent to get up fight with persons there, may be liable for assault and battery committed in execution of that purpose, although he did not actually participate in such assault. *Id.*

III. *Bastardy.*

18. Bastard may not be exhibited to jury for purpose of showing by its likeness to defendant that it is his child. *Hanawalt* v. *State*, 746.

IV. *Burglary.*

19. Lifting of latch and pushing open closed door, with intent expressed in statute, is a sufficient breaking. *State* v. *Groning*, 274.

CRIMINAL LAW.

V. *Carrying weapon.*

20. Not necessary to prove that pistol was loaded. *State* v. *Wardlaw*, 76.

VI. *Gambling.*

21. Selling of pools on horse races, and keeping of rooms where such pools are sold, do not constitute offence within statute prohibiting keeping of gaming table or other place of gambling, and which declares that all games, devices and contrivances at which money or any other thing shall be bet or wagered, shall be deemed a gaming table. *James* v. *State*, 745.

VII. *Larceny.* See DURESS, 2.

22. Possession of stolen property is not alone sufficient to sustain conviction. It must appear that property was recently stolen; possession must be unexplained, and in some form involve assertion of property in possessor. *Shepherd* v. *State*, 416.

23. At common law there are three cases in which conviction for larceny may be sustained when apparent possession is in accused: 1st. Where accused has mere custody of property, as contradistinguished from possession, as in case of servants, guests and the like: 2d. Where he obtained custody and apparent possession by means of fraud, or with purpose to steal property; and 3d. Where one has acquired possession by valid contract of bailment, which is afterwards terminated by some tortious act of bailee, or otherwise, whereby possession reverts to owner leaving custody merely with former, and he feloniously converts property to his own use. *Johnson* v. *People*, 745.

24. Where owner intends to part both with title and possession, and property is delivered in pursuance of such intention, person receiving it cannot be convicted of larceny, although transfer was induced by fraud of latter, and with a purpose to steal it. *Id.*

VIII. *Manslaughter.*

25. To constitute manslaughter, where there is no evil intent, it is sufficient if the killing is result of reckless or foolhardy presumption, judged by standard of what would be reckless in man of ordinary prudence under same circumstances. Rule applied where woman died from treatment administered with her consent, of one who publicly practised as physician. *Commonwealth* v. *Pierce*, 117, *and note.*

IX. *Receiving Stolen Goods.*

26. If pigeons are stolen from house in which they were confined by owner, and are found in possession of person who bought them of another about two weeks after larceny, latter may be convicted of such larceny if his possession of pigeons is not satisfactorily explained. *Commonwealth* v. *Deegan*, 544.

DAMAGES. See AMENDMENT. BAILMENT, 4. COMMON CARRIER, 16, 18, 25, 27. CONFLICT OF LAWS, 1. CONTRACT, 5. CORPORATION, 19. EASEMENT, 2. EQUITY, 17, 18. FORMER RECOVERY, 3. INSURANCE, 7. MALICIOUS PROSECUTION, 2. NEGLIGENCE, 11, 16, 40. PLEADING, 5, 6. RAILROAD, 2. TELEGRAPH, 2, 9.

1. In action for assault and battery where punitory damages are recoverable, financial condition of defendant may be shown by evidence of his reputed wealth. *Draper* v. *Baker*, 142. See *infra*, 5.

2. Verdict of $1200 for assault and battery by spitting in plaintiff's face, is not so large as to induce court to believe that jury were actuated by passion, prejudice, or other improper motive. *Id.*

3. Measure of, for breach of contract to assign insurance policy to purchaser of insured property is only the amount necessary to procure policy for remainder of time it had to run. *Dodd* v. *Jones*, 34, *and note.*

4. Measure of, for breach of contract generally, especially in margin transactions. *Id., note.*

5. On trial of action of trespass for assault and battery, plaintiff may give in evidence pecuniary circumstances of defendant to enhance his damages, and defendant may then give counter evidence; but unless such evidence is given by plaintiff defendant has no right to introduce proof on that subject, even in mitigation of damages. *Mullin* v. *Stangerberg*, 544.

DAMAGES.

6. For death of any person are limited by statute to such as arise from pecuniary injury to widow and next of kin. Injury received by some of next of kin, by dissolution of partnership relation between them and deceased, is not within statute. Injury claimed to arise by deprivation of such services and counsel as father might probably give to his children, must be limited to such services and counsel, as would be of pecuniary advantage. *Demarest* v. *Little*, 746.

7. Where injury claimed is deprivation of probability of receiving such probable accumulations as deceased might have made if he had continued in life, income derivable from funds invested, and which next of kin have received, should not be taken into account, and due weight must b given to contingencies which might diminish probable accumulations or divert them from next of kin. *Id.*

8. In action of trespass against railroad for running cars over ground, title to which, owing to failure to comply with certain statutory requisites, never vested in railroad, *held*, that plaintiff should be confined to damages caused by running cars over the ground. *Railroad* v. *Boyd*, 797.

DEATH. See ACTION, 2, 3.

DEBTOR AND CREDITOR. See ACTION, 15. ASSIGNMENT, 11. ESCAPE. EXEMPTION. PAYMENT, 1. SALE, 8, 9.

1. Property sold conditionally and delivered, without legal record of lien, passes to assignee of vendee under Vermont insolvent law. *Collender Co.* v. *Marshall*, 620.

2. Contract by which vendee of billiard tables agrees to pay in monthly instalments in one year entire value of tables, and if he so paid property was to be his, and if not, vendor's, is a conditional sale and not a lease. *Id.*

3. Where one in Vermont orders goods from party in New York on certain terms, as to payment, &c., but they are shipped, consigned to vendor, and accepted on different terms, *Held*, that contract was made in Vermont. *Id.*

4. Purchaser of real estate at execution sale may in equity avoid conveyances previously made by judgment-debtor in fraud of his creditors. *Belcher* v. *Arnold*, 416.

5. Right to recover property conveyed in fraud of creditors by debtor subsequently adjudicated bankrupt, is vested in assignee alone, and cannot be exercised by creditors in case of assignee's failure to bring action within time limited. *McCartin* v. *Perry*, 416.

6. Complainant recovered judgment at law against defendant's brother for false imprisonment, and afterwards filed creditor's bill to set aside, as fraudulent, two conveyances of land by brother to defendant. Evidence showed that lands in fact belonged to defendant, although legal title had been in name of brother. *Held*, that there was, against defendant, no ground of estoppel. *Lillis* v. *Gallagher*, 416.

DECEDENTS' ESTATES. See EQUITY, 19, 20. EXECUTORS AND ADMINISTRATORS.

DECLARATIONS. See EVIDENCE, 20.

DEED. See ACKNOWLEDGMENT. GIFT, 3. INFANT, 2, 3. NOTICE, 2. TRUST AND TRUSTEE, 3.

1. Mother was induced by son, while she was in feeble state of mind, to execute deed to him for her land, including her homestead, under assurance and belief that it would not take effect until recorded, and grantee agreed not to procure same to be recorded during life of grantor. *Held*, deed would not take effect as to grantee, and grantor might destroy same at pleasure. *Sands* v. *Sands*, 544.

2. B., being owner in fee of tract of land conveyed to his mother an undivided third part of it during her widowhood. Subsequently B. and his wife conveyed same land to W. by deed, granting clause of which states that grantors conveyed unto W. "all their estate," &c., in "the following described parts of tracts or parcels of land. * * * It is understood by the parties herein mentioned, that the interest herein conveyed is the two-thirds of the above

DEED.
described land." *Held*, that this deed only conveyed to W. a two-thirds interest in the land described. *Zittle* v. *Weller*, 747.
3. Rule that of two contradictory or repugnant clauses in deed first shall prevail, does not apply to supposed contradiction between parts of same clause. *Id.*

DELIVERY. See BAILMENT, 1, 2, 4. GIFT.

DEMURRER. See HUSBAND AND WIFE, 18. PLEADING, 5, 6.

DESCENT.
1. At common law, bastard has no right of inheritance. In Illinois, bastard may, under statute, inherit from its mother, but not from its father, unless he shall have married the mother and acknowledge child as his own. *Stoltz* v. *Doering*, 544.
2. Descent and heirship of real estate are exclusively governed by laws of country within which property is actually situated. *Id.*

DEVISE. See CHARITY, 2. WILL.

DIVORCE. See HUSBAND AND WIFE, I.

DOMICILE. See ATTACHMENT, 1. HUSBAND AND WIFE, 3, 11, 14. PARENT AND CHILD, 2.
1. Presence and intention to remain in place only while a student, do not confer domicile. Presumption is against student's right to vote. *Sanders* v. *Getchel*, 76.
2. Grandfather or grandmother of infant, when next of kin, is guardian by nature of such infant; and infants having domicile in one state, who after death of parents take up residence at home of paternal grandmother and next of kin in another state, acquire her domicile. *Lamar* v. *Micou*, 481.

DONATIO CAUSA MORTIS. See GIFT, 1, 2.

DURESS.
1. Note and mortgage given by mother to son's employer, from whom he had embezzled, with protection of son from exposure and prosecution as controlling motive, will be cancelled. *Foley* v. *Greene*, 416.
2. No action can be maintained upon promissory note, given by person under arrest on complaint for larceny of property, exceeding in value $100, to owner of property alleged to have been stolen, under agreement that complaint shall be placed on file, plaintiff having received note with notice of circumstances; question of guilt or innocence of accused not open in such action. *Gorham* v. *Keyes*, 482.

EASEMENT.
1. Burden of proof is on defendant who sets up prescriptive right to have water flow on plaintiff's land from roof of his artificial structure; not sufficient to show that structure had been in same condition for more than twenty years. *Hooten* v. *Barnard*, 76.
2. Plaintiff proving an invasion of his rights by defendant is entitled to at least nominal damages. *Id.*

EJECTMENT. See MUNICIPAL CORPORATION, 11. TRESPASS, 2. UNITED STATES, 2.
1. Where land is forfeited to state for non-payment of taxes, and state fails to convey title to purchaser for reason of illegality in its sale, original owner has better title than purchaser. *Chandler* v. *Wilson*, 798.
2. Person having for over twenty years a recorded deed of township of mainly wild land, during the time lumbering on some portions of it and cultivating others, does not thereby divest true owner of his title of certain lots within township, such lots not having been occupied during that period of time. *Id.*
3. Person who obtains title of three of five heirs of owner of land, deceased, can recover only three undivided fifths of the land of a person in possession, although latter person does not occupy under other heirs. *Id.*

ELECTIONS. See DOMICILE, 1.

EMINENT DOMAIN. See CONSTITUTIONAL LAW, III. CORPORATION, 23.

EQUITY. See ASSIGNMENT, 7, 8. BANK, 3. BILLS AND NOTES, 10. CORPORATION, 9, 10, 14–16, 28. ERRORS AND APPEALS, 3. EXECUTORS AND ADMINISTRATORS, 5. FRAUDS, STATUTE OF, 4, 12. HUSBAND AND WIFE, 20, 25, 27. NOTICE, 4. PARENT AND CHILD, 3. PARTITION, 2. PARTNERSHIP, 10, 14. RAILROAD, 5–7. SALE, 5. SET OFF, 3. SPECIFIC PERFORMANCE.

1. Dismissal of bill on demurrer carries cross-bill with it. *Johnamensen* v. *Tauer*, 143.

2. Where person seeks to reform instrument on ground of mistake, the mistake and exact form intention of parties requires instrument to assume, must be indubitably shown. *Keedy* v. *Nally*, 798.

3. The application for relief must be made with due diligence, and time runs from discovery of mistake. *Id.*

4. Will not interfere to remove cloud upon title in favor of party out of possession, claiming under legal title, against antagonist who is in possession under written title. *Weaver* v. *Arnold*, 682.

5. Motion by defendant in bill, to set aside interlocutory decree, and for leave to file new answer, is addressed to discretion of court, with which higher court will not interfere, unless discretion has been abused. *Schmidt* v. *Braley*, 482.

6. Proper practice in case defendant desires to file new answer, is to prepare and submit it with motion for leave to file. *Id.*

7. In action to reform contract and for relief thereunder, after same is reformed, court may specifically enforce same, or give adequate compensation for its non-performance. *Railroad* v. *Steinfield*, 482.

8. On trial of action to reform and enforce or rescind written contract, there may be given in evidence the original writing made by same parties, and also the subsequent acts done or procured to be done by party charged with fraud, and which tend to prove fraud or mistake. *Id.*

9. On such trial it is error to order contract set aside if party complaining neither pays back nor offers to return money received by him under contract. *Id.*

10. By practice of United States Supreme Court, decree *pro confesso* is not a decree as, of course, according to prayer of bill, nor merely such as complainant chooses to make it, but is made according to what is proper to be decreed upon statements of bill assumed to be true. *Thompson* v. *Wooster*, 417.

11. Defendants cannot allege anything in derogation of such decree, unrevoked, or question its correctness on appeal, unless on face of bill it appears manifest that it was improperly granted. *Id.*

12. Delay of fourteen years in application for re-issue of patent is strongly presumed to be unreasonable, but court cannot say, as matter of law, that it is not susceptible of explanation; and this defence cannot be set up after decree *pro confesso*. *Id.*

13. Where trustees of corporation gave bond, secured by mortgage on corporate property, which, in strict legal effect, bound them individually, court of equity will enjoin action at law against them thereon, if it appears that there was no intention on their part to become personally liable. *Maps* v. *Cooper*, 343.

14. Policy of insurance issued in name of agent of owner of vessel, instead of in name of principal, through mistake of insurance company's agent in preparing application, without any representation or mistake of owner or applicant, may be rectified after loss of vessel, although agent signed application with his own name "for applicant." *Hill* v. *Insurance Co.*, 416.

15. After decree disposing of issues and in accordance with prayer of bill, it is not competent for one of parties without service of new process or appearance, to institute further proceedings on new issues and for new objects, although connected with subject-matter of original litigation, by merely giving new proceedings title of original cause. *Smith* v. *Woolfolk*, 682.

16. If one complainant can, under any circumstances, have decree against another upon supplemental or amended bill, it must be upon notice to latter. *Id.*

17. Court of, has no inherent power to ascertain damages by reason of tor-

EQUITY.
tious acts unattended by profit to wrongdoer. There must be some joint interest of parties in the property for court of equity to assess the damages. In case of trespass where no such relation exists equity will follow the rule of law as to the damages. *Atlantic Co.* v. *Maryland Co.*, 211.

18. The right to maintain action of *quare clausum fregit* exists in Maryland, whether defendant committed the trespass unwillingly or wilfully. If adjoining owner has made mistake as to his title or boundaries in mining coal, lowest measure of damages is value of coal immediately upon conversion, without abatement of cost of severance. Equity cannot change this measure. *Id.*

19. It appearing that two sons had worked their father's farms, under agreement that they should do so until they had accumulated for him a fund of $12,000, and then they should have the farms free of rent during his life, and that specified sum had been gathered about a year before father's death, and thereafter sons had enjoyed use of farms free until father died; *Held*, that sons had no reason to complain, on appeal, that chancellor had made too small an allowance to them for services rendered under that contract. *Larison* v. *Polhemus*, 343.

20. Parties who in pleadings and proofs, have insisted that they were not accountable to him for rental value of land of which ancestor died seised, because they were in possession as equitable owners, cannot, at hearing, shift their ground, and claim that they were tenants of ancestor's widow, who might have been entitled to hold the land until her dower was assigned, but who has disclaimed such right. *Id.*

21. Favorite son induced mother to make conveyance of all her estate to him, upon assurance that it would not take effect in her lifetime. Mother was 73 and greatly weakened in body and mind from disease and sickness, so as to be incapable of transacting business, and proof showed deed was not intended by her to have effect before her death, but was handed to son to be placed with her papers, and upon her recovery she destroyed deed. *Held*, that trial court erred in decreeing that mother execute another deed in place of one destroyed, and in dismissing her cross-bill to have conveyance made set aside. *Sands* v. *Sands*, 544.

22. Statements by defendant who was subsequently arrested on a *ne exeat*, made to complainant's lawyer, that if suits should be begun against him, and he should be likely to get the worst of it, or if any order should be made against him by any court, his lawyer would find it out beforehand and would let him know, so that he could and would leave the state before they could do anything with him, accompanied by other statements, that complainant and her father were poor, and that he would law them both to death if they attempted any suits against him, and that he had put all his property out of his hands, but still had the benefit of it, are sufficient, on application for discharge, to hold him in custody under the *ne exeat*. *Cary* v. *Cary*, 417.

ERRORS AND APPEALS. See ADMIRALTY, 2. CONSTITUTIONAL LAW, 12. CRIMINAL LAW, 15. INFANT, 7. PRACTICE, 1, 2.

1. Opinion of lower court not part of record in United States Supreme Court. *England* v. *Gebhard*, 211.

2. Supreme Court United States, upon dismissing writ of error for want of jurisdiction, can adjudge to defendant in error costs incident to motion to dismiss, but no others. *Bradstreet Co.* v. *Higgins*, 482.

3. Decrees in favor of complainants in creditor's bill, for certain sums of money, are several, and one whose decree is for less than $5000 cannot appeal to Supreme Court United States. *Stewart* v. *Dunham*, 682.

4. Judgment of State Supreme Court was, that judgment of State District Court be reversed with costs, with directions to County Court to enter judgment upon findings for plaintiff as prayed for in his complaint. *Held*, final for purposes of writ of error to United States Supreme Court. *Mower* v. *Fletcher*, 417.

ESCAPE.

1. Ancient rule that debtor in execution, by voluntary escape became discharged both from imprisonment and debt, leaving creditor to look to sheriff alone for debt, is no longer in force, and upon such escape he may be re-arrested and imprisoned. *People* v. *Hanchett*, 274.

ESCAPE.

2. Where debtor has been legally arrested by sheriff under *ca. sa.* running in name of people, and is enlarged on bond for his appearance, on day set for hearing of his application for discharge, court, on refusing discharge, may order him back into officer's custody without process in name of people, and this may be verbally done. *People* v. *Hanchett*, 274.

ESTOPPEL. See AGENT, 4. COMMON CARRIER, 9. CONTRACT, 6. CORPORATION, 2. DEBTOR AND CREDITOR, 6. EXECUTION, 4. HUSBAND AND WIFE, 8. REMOVAL OF CAUSES, 7.

If A. is informed by B., adjoining owner, that B. proposes to erect wall on his own land, at his own expense, and A. assents to building of wall according to B.'s line, as established by survey of C., A. is not estopped to maintain writ of entry against B., after wall has been built, for land erroneously included in such survey, if in so assenting he acted under mistake of fact. *Proctor* v. *Putnam Co.*, 212.

EVIDENCE. See ACCOUNT, 1. ADMIRALTY, 3. AGENT, 7–9. ATTORNEY, 3. BURDEN OF PROOF. CORPORATION, 19. CRIMINAL LAW, 2, 4, 13–16, 18, 20, 22, 26. DAMAGES, 1, 5. EASEMENT, 1. EQUITY, 8, 22. EXPERT. FRAUDS, STATUTE OF, 11. HIGHWAYS, &C., 2, 6, 7, 9. INFANCY, 4. INSURANCE, 8, 9, 14. INTOXICATING LIQUORS, 1. NEGLIGENCE, 7, 8, 11, 30. PARTNERSHIP, 7, 12, 13. POSSESSION, 3. SUNDAY, 4. STATUTE, 3. TELEGRAPH, 5. TORT, 3. TRIAL, 1. UNITED STATES COURTS, 2. WITNESS.

1. Matters of practice in another state may be proved by testimony of lawyers in that state. *Blackwell* v. *Glass*, 77.

2. Justice's judgment from another state cannot be proved by certified copy of his minutes. The original minutes must be produced, or copy verified by witnesses who have compared it with original. *Id.*

3. In action for personal injuries court may, in proper case, at the trial direct plaintiff to submit to personal examination by physicians on behalf of defendant. *White* v. *Railway Co.*, 527, *and note.*

4. But it is not error for court to refuse to so order, in absence of any showing that justice would be promoted thereby, and especially so when plaintiff submits to such examination in presence of jury. *Railroad Co.* v. *Finlayson*, 532, *and note.*

5. When official reporter is not present at trial to take down exact words—court having made no minutes—and counsel disagree as to what witness said on material matter, question is for jury; and this although defendant moved for nonsuit. *Porter* v. *Platt*, 752.

6. In such case testimony of attorney, with his minutes taken on trial, is not admissible to strengthen or weaken that of witness given on same trial. *Id.*

7. Whether physician is qualified to testify as an expert upon questions of insanity, is question of fact for presiding judge, whose decision will only be reviewed in extreme cases. *Fayette* v. *Chesterville*, 799.

8. Skilful and reputable physicians, although not expert upon subject, may testify to mental condition of their patients when they have adequate opportunity of observation. But this does not embrace case where single examination was made by physician to qualify himself as witness in pending litigation. *Id.* See EXPERT.

9. In action for personal injury plaintiff's attending physician testified that he had examined plaintiff, who stated the symptoms, and that he had suffered pain. Being asked whether plaintiff was feigning or "making believe," witness answered, "No, sir; I know he did not, from examination and tests." *Held*, that with the explanation as to his means of knowledge, there was no error in admission of evidence. *Chicago Railroad Co.* v. *Martin*, 483.

10. It does not even require an expert to know existence of pain from nature of injury and patient's outward manifestations. *Id.* See also *Tierney* v. *Railway Co.*, 669.

11. Directions given to stranger with reference to delivery of baggage, by baggage-master while away from baggage-room of company engaged in transaction of his own private business, are not binding on company. *City* v. *Raynard*, 212.

12. In prosecutions for assault words uttered during continuance of main

EVIDENCE.

transaction or so soon thereafter as to preclude hypothesis of concoction or premeditation, whether by active or passive party, if relevant, may be proved as any other fact, without calling party who uttered them. *Flynn* v. *State*, 274.

13. Party cannot call and examine witnesses to support general character of another witness, or himself, as a witness, for truth and veracity, until character of witness has been directly assailed. *Tedens* v. *Shumers*, 545.

14. That due bill is found in hands of maker is *prima facie* evidence of its payment. *Id.*

15. If plaintiff shows by preponderance of evidence that defendant owes him on due bill, notwithstanding its surrender, defendant must overcome that evidence by a preponderance, to defeat recovery. *Id.*

16. Contradictory declarations of witness, whether oral or in writing, made at another time, cannot be used for purpose of impeachment until witness has been examined upon subject, and his attention particularly directed to the circumstances in such way as to give him full opportunity for explanation or exculpation, if he desires to make it. *The Charles Morgan*, 682.

17. If contradictory declaration is in writing, questions as to its contents, without production of instrument itself, are ordinarily inadmissible. Circumstance may, however, excuse its production. All law requires is that memory of witness be properly refreshed, which court is to determine. *Id.*

18. Where A., desiring to talk over telephone with B., asked operator to call him, and operator thereupon had conversation with B., reporting to A., who was standing by, what B. said as it came over the wire, *held*, in subsequent action between A. and B., former might prove, by himself and others, what operator reported to him as coming from B., operator being called and not remembering conversation. *Sullivan* v. *Kuykendall*, 442, *and note.*

19. Fact of mailing letter, properly addressed, with postage prepaid, creates no legal presumption that it was duly received; but is merely to be weighed along with other evidence in determining the question. *Id.*

20. On question of pedigree declarations are admissible: 1. When it appears by evidence *dehors*, that declarant was lawfully related by blood or marriage to person or family whose history the facts concern; 2. That declarant was dead when declarations were tendered, and 3. That they were made *ante litem motam.* Rule applied in determining rightful distributees of intestate's estate, as to declarations of intestate's sister that claimant was natural son of intestate. *Northrop* v. *Hale*, 143.

21. In course of negotiation for lease, a paper was partly written by defendant and handed to plaintiff, and by him interlined and returned to defendant, which paper was not signed by either of the parties. On trial question was whether terms of lease were those mentioned in paper only, or there were other terms agreed upon outside of it. *Held*, that paper was admissible as part of *res gestæ*. *Freeman* v. *Bartlett*, 747.

22. THE LAW OF JUDICIAL NOTICE, 553.

EXECUTION. See EXEMPTION. JUDICIAL SALE.

1. Merchant tailor, who is head of family and resident, is entitled to exemption of such portion of his stock as he may select up to statutory limit of value; and this right is absolute, and does not depend upon any claim or selection to be made by him. *Rice* v. *Nolan*, 275.

2. Claim of exemption on morning preceding sale upon order of attachment, is not too late. *Id.*

3. Where stock in trade of debtor is mortgaged, he is entitled to an exemption of his own selection, free of all liability from debt up to full value of $400. *Id.*

4. Where exempt property of defendant has been levied on by attachment, and a few days before sale thereof defendant makes assignment for benefit of creditors, with no reservation of such exempt property, but no proceedings are taken under such assignment, and where plaintiffs do not claim the property thereunder, and are not influenced or prejudiced thereby, defendant is not estopped as against such plaintiffs from thereafter claiming attached property as exempt. *Id.*

EXECUTORS AND ADMINISTRATORS. See ACTION, 3, 7. CORPSE, 1, 2. FRAUDS, STATUTE OF, 9. REMOVAL OF CAUSES, 6, 8. WITNESS, 4.

1. That same person is both trustee and executor will not enlarge or transfer the powers from one capacity to the other. *Long* v. *Long*, 212.

2. A. died in Connecticut and letters of administration were taken out there. There were no claims in Rhode Island against estate of A. *Held*, that Connecticut administrator could endorse promissory note due estate of A., so as to enable endorsee to bring suit on note in Rhode Island. *Mackay* v. *Church*, 683.

3. Promissory notes given to two joint administrators for debt due estate of intestate, may be transferred and endorsed by one of them. *Id.*

4. If administrator of deceased partner has settled with surviving partners, and his account has been allowed by Probate Court, it has no jurisdiction to open account upon petition of administrator's successor, to which surviving partners only are made respondents, on ground that settlement was induced by their fraud. *Blake* v. *Ward*, 77.

5. When bill in equity was brought by administrator to set aside as fraudulent against creditors conveyances made by deceased, and it did not appear whether administrator held sufficient assets to pay expenses of administration; *Held*, that the bill instead of being dismissed might, if administrator lacked funds to defray expenses of administration, be amended by setting forth this fact and by adding creditors. *Estes* v. *Howland*, 799.

6. THE POWER OF AN EXECUTOR WITH THE WILL ANNEXED OVER HIS TESTATOR'S REAL ESTATE, 689.

EXEMPTION. See EXECUTION. PARTNERSHIP, 3. PATENT, 2. PENSION, 1.

Insolvent debtor who sells property which is subject to execution, and with proceeds immediately purchases exempt property, will be presumed to have done so with intent to hinder, delay or defraud his creditors; but property so purchased does not cease to be exempt. Only remedy of creditors is by attacking sale of non-exempt property. *Comstock* v. *Bechtel*, 748 and 783, *and note.*

EXPERT. See EVIDENCE, 7, 8, 10. HIGHWAY, 7.

Non-professional witnesses having sufficient opportunities for observation may give their opinions on question of insanity, having first stated the observed facts. *Boughman* v. *Boughman*, 77.

EXTRADITION. See CRIMINAL LAW, 11, 12.

FACTOR. See BAILMENT, 2–4. CONTRACT, 5.

FENCE. See FIXTURE, 3. LANDLORD AND TENANT, 1.

FERRY. See CONSTITUTIONAL LAW, 1. NEGLIGENCE, 5.

FIXTURES.

1. Boards in corn barn, used for permanent floor, and stone posts, deposited upon farm for building necessary fences. *Hackett* v. *Amsden*, 748.

2. Trespass *de bonis* is proper form of action to recover for boards and posts; as claim was not for breaking and entering, but for taking and carrying away. *Id.*

3. Fence built by one person on land of another under parol agreement that it might be removed at will of builder, becomes a fixture which will pass with grant of land to *bona fide* purchaser without notice. *Rowand* v. *Anderson*, 483.

FOREIGN CORPORATION. See CORPORATION, 30.

FORGERY. See CORPORATION, 29.

FORMER RECOVERY. See HUSBAND AND WIFE, 27.

1. Damage to goods and injury to person, occasioned by one act, give rise to distinct causes of action. *Brunsden* v. *Humphrey*, 369 *and note.*

2. A., claiming to be injured by collision with certain teams left in highway by B., brought action against B. to recover damages. B. obtained judgment. *Held*, that this judgment was bar to subsequent suit against town. *Hill* v. *Bain*, 683.

FORMER RECOVERY.

3. A. recovered judgment in assumpsit against B. for money loaned; A. afterwards brought case against B. for alleged fraudulent and false statements to obtain loan. *Held*, that judgment in assumpsit could not be pleaded in bar; but that value of judgment in assumpsit was to be considered as *pro tanto* reducing the damages. *Whittier* v. *Collins*, 799.

4. Plaintiff was owner of certain land, and in 1867 and in 1868, but not afterwards, defendants worked seam of coal lying under and near to plaintiff's land, which subsided in consequence, and the injury was repaired by defendants. In 1882 a second subsidence and injury occurred from same cause. *Held*, that plaintiff was entitled to maintain action for damage done in 1882, and that he was not barred by Statute of Limitations. *Mitchell* v. *Darley Co.*, 432, *and note.*

FRAUD. See BANKRUPTCY. COMMON CARRIER, 16. CORPORATION, 26, 27, 29. DEBTOR AND CREDITOR, 4, 5. EXECUTORS AND ADMINISTRATORS, 4. HUSBAND AND WIFE, 23, 24. INSURANCE, 26. MORTGAGE, 22. NEGOTIABLE INSTRUMENT, 2. PLEADING, 1. POSSESSION, 2. LIMITATIONS, STATUTE OF, 8. TORT, 6. TROVER, 1. WILL, 11.

1. Party not excused for want of care and prudence in signing contract without reading it, if capable of reading, unless induced to do so by wilfully false statements of party procuring his signature. *Linington* v. *Strong*, 275.

2. What is negligence in signing contract without reading same is question for jury; it is not proper to select certain facts, and tell jury that they afford no evidence of negligence or want of proper care. *Id.*

3. To support action, false representation need not be adrressed directly to plaintiff, if made with intent to influence every person to whom it may be communicated. Not essential that misrepresentation be sole inducement to purchase. *Carvill* v. *Jacks*, 275.

FRAUDS, STATUTE OF. See CONTRACT, 4. EXECUTORS AND ADMINISTRATORS, 5. EXEMPTION. PARTNERSHIP, 3. SPECIFIC PERFORMANCE, 3.

1. Does not require that all terms of contract shall be agreed to or written down at one time, nor on one piece of paper; but the paper signed must be connected with the other papers by internal evidence. *North* v. *Merdel*, 143.

2. Parol or simple contracts for sale of growing timber to be cut and severed from land by vendee do not convey any interest in lands, and are not therefore within statute. *Banton* v. *Shorey*, 799.

3. Doctrine of part performance to take parol contract for sale of land out of statute, does not apply to contracts between tenants in common. *Haines* v. *McGlone*, 418.

4. Where one tenant in common by parol contract sells his moiety of land to co-tenant, and afterwards repudiates contract and conveys to another purchaser with notice, latter cannot recover in equity except upon return to co-tenant of his purchase-money and half of all taxes and cost of improvements paid by him, and interest. *Id.*

5. When relied upon in defence to action for breach of contract, on ground that it was not to be performed within year, should be pleaded specially. *Farwell* v. *Tilson*, 143.

6. To defeat application of statute by happening of contingency, it must be such as renders performance of contract possible within year. *Id.*

7. Effect is to be given to oral contract if proved, unless upon whole case it appears affirmatively that it *is* not to be fully performed within year; it is not sufficient that it *may* not be. *Id.*

8. In determining question of time of performance of contract, it is proper to consider circumstances and situation of parties, so far as known to each other, and subject-matter of contract. *Id.*

9. Promise of executor to pay $5000 to one of testator's heirs-at-law, who received nothing under will, in consideration that he would forbear further opposition to probate of will, claimed to have been made through undue influence, is not within statute, and such forbearance is sufficient consideration. *Bellows* v. *Sowles*, 620.

10. G. was refused credit by P.: M., who employed G. at time, told P. to

FRAUDS, STATUTE OF.

let G. have goods, and he would see it paid. The credit was given to M. and was refused to be given to G. *Held*, that M.'s promise was an original undertaking. *Maddox* v. *Pierce*, 343.

11. Plaintiff's house being mortgaged, he entered into parol contract with defendant to purchase mortgage, sell house, and after satisfying mortgage debt, costs, &c., to pay balance to plaintiff. *Held*, that plaintiff in assumpsit could recover this balance and that contract was not within Statute of Frauds. *McGinnis* v. *Cook*, 620.

12. REFORMATION IN EQUITY OF CONTRACTS VOID UNDER THE STATUTE OF FRAUDS, 81.

13. VALIDITY OF BONA FIDE VOLUNTARY CONVEYANCES BY SOLVENT DEBTORS, AS AGAINST PRIOR CREDITORS, 489.

GAMBLING. See CRIMINAL LAW, 21.

GARNISHMENT. See ATTACHMENT.

GAS COMPANY. See CORPORATION, 13.

GIFT.

1. To establish gift *causa mortis* evidence must show not only that person *in extremis* distinctly designated thing given and donee, but also that property was presently to pass, and delivery. *Newton* v. *Snyder*, 418.

2. Delivery to third person for donee, is sufficient; but delivery to agent to perform act or make delivery only after giver's death, would amount to nothing. *Id.*

3. Deed for interest in land, unlike a will, must take effect upon its execution; but it may be good as voluntary settlement, though it be retained by grantor in his possession until his death, when circumstances, aside from retention of deed, do not show grantor did not intend it to operate immediately. *Cline* v. *Jones*, 418.

GUARANTY.

1. Following letter was held not to create a continuing liability: "Gentlemen: The bearer of this letter, my son-in-law, * * * wishes to place a stock of groceries in his provision and meat store, in this place. To enable him to do this, I am willing to be responsible to you for the amount of groceries he may order of you." *Knowlton* v. *Hersey*, 144.

2. In suit upon guaranty of payment of note owned by bank, fact that bank held, before suit, assignment, through trustee, of patent right and some claims for damages for alleged infringement, and was offered more for these than enough to have paid note, such assignment having been made by principal debtor; which patent and claims afterward prove valueless from adverse ruling of courts, will not discharge guarantor, although he may have urged bank to accept offer. It was bank's duty, as trustee, to obtain largest sum that could be realized, and making mistake, while acting in good faith, will not subject bank to loss. *Kaufman* v. *Loomis*, 144.

GUARDIAN AND WARD.

1. Guardian appointed in one state, of ward domiciled in another, where law of latter is less strict as to investments of a guardian than that of former, will not, in absence of express statutory requirement, be held to the more rigid rules of state of his appointment, when he has faithfully and prudently exercised his discretion. *Lemar* v. *Micon*, 144.

2. Former guardian of plaintiff's ward pledged to defendant bank to secure his own note two negotiable bonds owned by ward, on which was endorsement tending to show ward's ownership, and which was seen by cashier at time of negotiation. *Held*, 1. That defendant was put upon inquiry, and that it was not sufficient to only inquire of guardian. 2. That plaintiff could recover bonds in action of replevin. 3. That settlement of guardian's account in Probate Court did not affect title to bonds. *Langdon* v. *Bank*, 620.

HABEAS CORPUS. See CRIMINAL LAW, 5.

HIGHWAYS, STREETS, BRIDGES. See CONSTITUTIONAL LAW, 26, MUNICIPAL CORPORATION, 6, 7. NEGLIGENCE, 1, 3, 6, 12, 36. WAY.

HIGHWAYS, STREETS, BRIDGES.

1. Use of street or sidewalk after notice that it is out of repair, is not necessarily negligence. *City* v. *Schmidling*, 483.

2. In action against city to recover for personal injuries alleged to have resulted from defective sidewalk, fact that walk was removed by city authorities and better one substituted soon after injury occurred, may be considered as circumstance tending to show that walk removed was out of repair, but it is no evidence that city authorities had knowledge of defect before occurrence of injury. *Id.*

3. Owners of bridge across navigable stream must use reasonable diligence to prevent such accumulation of drift about bridge piers, either above or below surface of water, as might endanger navigation. *St. Louis, &c., Railway Co.* v. *Meese*, 622.

4. Owner of land through or along whose property public highway runs, has absolute right to use portion of same for certain purposes, for temporary period and in reasonable manner, taking care not to expose an object calculated to frighten ordinarily gentle and well trained horses. *Piollet* v. *Simmers*, 235, *and note.*

5. Travelling on Sunday cannot be set up as a defence by one sued for an illegal obstruction of a highway. *Id.*

6. Where in such a case plaintiff had proved that other horses had been frightened by the object in question, evidence was admissible to show that these horses were skittish. *Id.*

7. The horse having fallen and died, witnesses familiar with horses may be asked their opinion as to whether the object was calculated to frighten the horse, and whether the mere fall or the fright could have killed him. *Id.*

8. Use of velocipedes upon sidewalk of street not necessarily unlawful. *Purple* v. *Greenfield*, 484.

9. Opening about foot and half deep, little more than foot in width, and two feet and a half long, was made six inches from line of sidewalk in town, to furnish light and air to a cellar. There was nothing to indicate where line of sidewalk ended. Opening had existed for some months, and was covered by loose board, and was known to be so covered by chairman of selectmen of town. While board was off, traveller stepped into opening. *Held*, that jury were authorized to find that town had reasonable notice of hole, insecurely guarded, near highway. *Id.*

10. Town is not bound to erect barriers to prevent person travelling with horse and wagon from straying from highway, although there is dangerous place 34 feet from marked travelled part of highway, and 9½ feet from line of location of highway, which he may reach by so straying. *Barnes* v. *Chocopee*, 484.

HOMESTEAD. See CONSTITUTIONAL LAW, 16.

HOMICIDE. See ACTION, 2, 3. CRIMINAL LAW, VIII.

HOUSE OF REFUGE. See CHARITY, 1.

HUSBAND AND WIFE. See ACKNOWLEDGMENT. BANK, 2. BILLS AND NOTES, 8. CRIMINAL LAW, 1. INSURANCE, 17. LIMITATIONS, STATUTE OF, 13. MORTGAGE, 6. PARENT AND CHILD, 3. SURETY, 5. TORT, 4. WITNESS, 4.

I. *Marriage, Divorce, and Alimony.*

1. Guardian of insane woman cannot maintain action against woman's husband for divorce and alimony, or for alimony alone. *Birdsell* v. *Birdsell*, 481.

2. Articles of separation which contain no express stipulation against divorce, are not *per se* bar to divorce for causes existing prior to execution of articles. *Fosdick* v. *Fosdick*, 681.

3. That liberal divorce law of Rhode Island influenced petitioner for divorce to come there, does not make him any the less a domiciled inhabitant of state, if he came *bona fide* to reside permanently. *Id.*

4. Widow cannot maintain action against administrator of deceased husband, for fees of her counsel for prosecuting suit against husband for divorce *a mensa et thoro*, pending which suit he died. *McCurley* v. *Stockbridge*, 344.

HUSBAND AND WIFE.

5. But counsel themselves can maintain such action, if it be made to appear affirmatively that the divorce suit was justifiably instituted. *McCurley* v. *Stockbridge*, 344.

6. In absence of any statutory prohibition, marriage at common law may be had *per verba futuro cum copula;* but the *copula* must be in fulfilment of the agreement to marry, or in consummation of such contract. For the *copula* to be available, parties must at time have accepted each other as husband and wife. *Stoltz* v. *Doering*, 545.

7. Any unjustifiable conduct on part of husband which so grievously wounds mental feelings of wife as to seriously impair her health, or such as utterly destroys the legitimate objects of matrimony, constitutes extreme cruelty, although no personal violence is even threatened. *Avery* v. *Avery*, 276.

8. In 1864 Henry First, resident of Knox County, Ohio, absconded, deserting his wife and children, and nothing was heard of him in that community until 1880. In 1873 land in said county belonging to him in common with others, was partitioned at suit of co-tenants, and his share of proceeds came to custody of Brent, Clerk of Common Pleas. In 1879, with his wife's assent, probate court appointed Bennett administrator of W. H. First, supposing that to be true name of absentee, and he collected from Brent $174.21, the said share of said proceeds. In October 1880, First demanded said sum from Brent, and brought suit. *Held*, in absence of showing to contrary, presumption, from facts stated, is that money was paid to wife, who was entitled to a year's support, on supposition that husband was dead; and that, as she was entitled to support out of his property during life, First's conduct estops him from claiming that payment to her was unauthorized. *Brent* v. *First*, 212.

9. THE RIGHT TO ALIMONY AFTER DIVORCE, 1.

II. *Curtesy and Dower.*

10. Under French law, by marriage without contract as to property, community of property between husband and wife is established as an incident of marriage. During coverture husband has control and management of community property, and he may dispose of *his* half by will. Will of whole of his property made by husband before marriage will not defeat wife's right. *Harral* v. *Harral*, 344.

11. Person *sui juris* may change his domicile as often as he pleases. Naturalization in adopted country is not necessary. *Id.*

12. To effect change of domicile there must be voluntary and actual change of residence with *animus manendi*. *Id.*

13. By French law marriage of foreigner in France without any contract as to property, followed by establishment of conjugal domicile in France, will subject property of married persons to community law, and government authorization under Article XII. of code is not necessary to establishment of such domicile. *Id.*

14. Husband with conjugal domicile in France was brought to this country in 1878 and sent to hospital for insane in Philadelphia, where he died in 1881. *Held*, that there was no change of domicile. *Id.*

III. *Separate Estate.* See *infra*, 25, 27, 31–33.

15. Judgment obtained by husband and wife against railway company, for injuries sustained by wife, cannot be attached for debt of husband. *Clark* v. *Wooten*, 545.

16. Goods purchased by married woman on credit are not her separate property; nor can she acquire title to any property or business upon the credit of its after-production. *Lienbach* v. *Templin*, 127, *and note.*

17. Where wife claims property as against husband's creditors, she must show affirmatively, that she paid for it with her own separate funds. *Id.*

18. *Feme covert* brought suit for personal tort by her next friend. It appeared on face of declaration that she had husband living. On general demurrer, *held*, that suit should have been brought in name of husband and wife jointly. *Treusch* v. *Kamke*, 748.

19. Suit at law will not lie on promise of husband to repay to wife moneys received by him for her during coverture; but will against husband's executors

HUSBAND AND WIFE.
on promise made by them officially to pay moneys so received by husband. *Rusling* v. *Rusling*, 748.
20. Son advanced money to mother for her support, under agreement that he should be repaid at her death out of her estate. Son procured from wife the money advanced, agreeing that she should have account against his mother. Equity will enforce the claim in behalf of wife. *Titus* v. *Hoagland*, 344.
21. Parol assignment to wife being unknown to mother, counter-claim which she had against son at her death will be set-off against claim of wife. *Id.*
IV. *Torts, Contracts, Conveyances, &c. See ante*, 16, 18.
22. Legislation of New Jersey does not give married woman capacity to make legal contract with her husband. *Farmer* v. *Farmer*, 418.
23. Wife may give her property to her husband, or make contract with him which will be upheld in equity, but courts always examine such transactions with anxious watchfulness and dread of undue influence. *Id.*
24. Where contract is made by parties holding confidential relations, the burden, if contract is assailed, is on stronger party to show no advantage was taken; otherwise fraud will be presumed. *Id.*
25. Contract by which married woman charges her separate estate in equity, need not be in writing. *Elliott* v. *Lawhead*, 484.
26. Action founded on such contract, where personal judgment against married woman is not authorized, is cognisable only in equity. *Id.*
27. Prior action to recover money judgment, in which it is sought to reach same separate property by attachment, in which plaintiff fails, is no bar to equity suit to charge such separate property. *Id.*
28. Where by statute married woman is given use and disposition of her earnings and property, husband is not responsible for her torts not committed in his presence or by his direction. *Norris* v. *Corkill*, 135.
29. Under statute empowering married women to carry on any trade or business on her sole and separate account, she is not authorized to become her husband's partner. *Fairlee* v. *Bloomingdale*, 648, *and note.*
30. Where married woman, having separate estate or business, employs husband to manage same, and agrees to pay him stated compensation, a chose in action in his favor against her is created, which, on her failure to pay, can be reached by judgment creditor of husband. *Kingman* v. *Frank*, 469, *and note.*
31. Married woman who purchases real estate at trustee's sale, made under direction of court of equity, and who only pays part of purchase-money, is personally liable for balance. *Fowler* v. *Jacob*, 343.
32. Decree *in personam* against *feme covert* for such balance, means only that unless by given time she pays such balance, any of her separate property which she would have right to pledge in order to pay or secure a debt, may be taken in execution to pay what she owes on her purchase. *Id.*
33. Married woman has power to charge her separate property with payment of her debts, and whether she does so or not, is question of intent; which may be shown on face of obligation creating debt, or *aliunde*. *Id.*
34. Married Women Traders, 353.

INDEPENDENT CONTRACTOR. See Master and Servant, 13. Negligence, 12, 13, 35, 41.

INDIAN. See Constitutional Law, 18.

INFANT. See Common Carrier, 14, 15. Domicile, 2. Guardian and Ward. Negligence, 17. Parent and Child. Will, 11.
1. Executed note for horse; before majority rescinded contract, tendered horse to payee (refused) and demanded note. *Held*, that avoidance and tender annulled contract on both sides *ab initio*. *Hoyt* v. *Wilkinson*, 683.
2. Deed of infant may be avoided after maturity, by any unequivocal act; a reconveyance to another, not in privity with first grantee, disaffirms first deed; and this, whether last be quit-claim deed, or deed with covenants of warranty. *Bagley* v. *Fletcher*, 419.
3. Deed of infant will pass his estate subject to disaffirmance after maturity, but covenants in his deed are absolutely void. *Id.*

INFANT.

4. Infancy of defendant, in action for goods sold and delivered, cannot be proved by affidavit made in chancery suit, to which plaintiff was not a party, by defendant's father, since deceased; there being no question of pedigree in the case. *Haines* v. *Guthrie*, 170, *and note.*

5. When in court as suitor or defendant, becomes ward of court, whose duty it is to see that his rights are protected. If general guardian fails to appear, court should appoint guardian *ad litem*. And if the guardian fails to properly protect interests of ward, it is duty of court, *sua sponte*, to compel him to do so, whenever fact comes to knowledge of court. Court should see that proper pleadings are made to present infant's defence. *Lloyd* v. *Kirkwood*, 621.

6. Where bill to establish and enforce resulting trust as against infant heir, showed upon its face that alleged trust arose twenty-five years before suit, and court rendering decree therein against infant failed to require guardian *ad litem* to set up laches in defence, *held*, that court was justified in setting decree aside on bill filed by infant. *Id.*

7. An infant sued by *prochein ami*. Afterwards attorney employed by infant dismissed suit at her request. Motion was subsequently made by *prochein ami* to reinstate case. On appeal from overruling of this motion, *held*, 1. That infant was incompetent to appoint attorney or take any step in suit which could bind her rights. 2. That court below was in error in refusing to reinstate suit. 3. That appeal could be taken from such refusal. 4. That infant, after reaching twenty-one, could n t ratify and approve act of her attorney. Where infant sues by *prochein ami*, latter is only person authorized to prosecute suit, and is responsible for costs. While court, after majority of infant, can discharge *prochein ami*, and give infant control of suit, it must make such equitable order as will protect former from costs. *Wainwright* v. *Wilkinson*, 213.

INJUNCTION. See ACTION, 5. CORPORATION, 9, 10, 22, 23. EQUITY, 13. SCHOOL, 1. WATERS AND WATER-COURSES, 2. WAY, 5.

1. Issued when court has no jurisdiction, void. *Willeford* v. *State*, 77.

2. May issue to restrain active waste on property in litigation. *Ehardt* v. *Boaro*, 345.

3. Is proper remedy to prevent collection of taxes by distraint upon railroad property, after tender of payment in tax-receivable coupons. *Allen* v. *B. & O. Railroad Co.*, 484.

INSANITY. See EVIDENCE, 7, 8. EXPERT. LUNATIC.

INSOLVENCY. See DEBTOR AND CREDITOR, 1. LIS PENDENS.

INSURANCE. See CONFLICT OF LAWS, 2. DAMAGES, 3. EQUITY, 14. MORTGAGE, 7.

I. *Life.*

1. Assignment of policy to person having no insurable interest, not void. *Mut. Co.* v. *Allen*, 485.

2. Policy not avoided by omission in application to state slight disorders. *Ins. Co.* v. *Trust Co.*, 55.

3. Sum insured was by policy payable to wife or legal representatives of assured. *Held*, that wife was entitled to this sum if she survived; if not, his executor or administrator. *Johnson* v. *Van Epps*, 144.

4. In such case, whatever may be right of assured during lifetime of wife, after her death he will have same power over policy as if it had been originally payable to himself, his executors and administrators. *Id.*

5. Insurance of one's own life for benefit of one not a relative, is not void. But if it were, only insurer can raise question: heirs of insured cannot. *Id.*

6. Although notices issued by insurance company required premiums to be paid at 12 M., on day they fell due, yet where no such stipulation was in policy itself, and, according to course of all previous dealings between it and assured, literal compliance with this requirement had not been exacted, if right to do so existed at all, it was waived, and company could not insist on literal compliance without notice before day of payment. *Ins. Co.* v. *Garmany*, 145.

7. Where policy provided for payment of premiums annually, and gave assured right to continue insurance, if, after policy had been continued for several years, company improperly refused to receive further premiums or to con-

INSURANCE.
tinue insurance, on suit brought therefor by assured, measure of damages was amount of premiums paid with interest. *Ins. Co.* v. *Garmany*, 145.

8. If declaration on policy refers to it without annexing copy, and does not set up contract inconsistent with policy, objection, when policy is offered in evidence, that there is variance between policy and declaration, cannot be maintained. *Pierce* v. *Ins. Co.*, 545.

9. If declaration on policy, which refers to it, is not demurred to, it is no ground of exception to admission of policy in evidence, that declaration construed in connection with policy is ambiguous. *Id.*

10. Declaration on policy need not allege facts which defeat part of plaintiff's claim under special provisions of policy. *Id.*

11. Policy on life of A. was payable on his death to his wife and children, and their assigns; and if he survived certain day, was payable to him. *Held*, that he had assignable interest therein. *Id.*

12. Policy provided that if assigned, written notice should be given insurer. Assignment was made, and notice given and acknowledged. *Held*, not to amount to promise to pay assignee, and that he could not sue in his own name. *Id.*

13. Policy, in consideration of payment of annual premium, insured life of A. in certain sum, or after due payment of premium for two or more years, in case of default in payment of any subsequent premium, for as many tenth parts of original sum as there should have been complete annual premiums paid. In margin were words and figures denoting that one-half annual premium was payable in cash, and one-half by note. *Held*, that these words and figures formed part of policy, and that, if annual premiums were paid, half cash and half by note, "complete annual premiums" were paid. *Id.*

14. In action at law on policy payable at day named therein, evidence is inadmissible, in defence, to show that different day should have been written. *Id.*

15. In such action plaintiff can recover interest only from date of writ, unless in declaration he alleges demand before that time. *Id.*

16. If policy is payable ninety days after due notice and satisfactory evidence of death of person whose life is insured, or, if he survives certain day, is then payable to him, ninety-day clause has no application to latter contingency, and interest is not payable except as damages for wrongfully withholding the money. *Id.*

17. A. took out policy on his wife's life, payable in four years to her if living and if not living to himself. He paid premiums, retained policy and received payments made upon it. She was living at maturity of policy, but had filed petition for divorce. Statute secured to a married woman and her representatives benefit of all policies not exceeding in aggregate $10,000, taken out on life any person and expressed to be for her benefit. *Held*, that wife was entitled to amount due on policy. *Ins. Co.* v. *Mason*, 419.

18. Certificate of membership issued by association organized under provisions of Ohio Revised Statutes. sect. 3630, "for the purpose of mutual protection and relief of its members, and for the payment of stipulated sums of money to the families or heirs of the deceased members," which, by its terms, is made payable to the assured, "or any person designated by his will or his heirs, if no person is designated herein or by will," does not authorize such member, by testamentary appointment, to constitute person beneficiary of such insurance, who is not of family of assured, or may not, upon his death, become his heir. *Aid Association* v. *Gunser*, 345.

19. F. took out policy payable to M., his wife, and his children, of whom he had four by former wife. Subsequently child was born to F. and M. Afterwards F. and M. transferred their interest in policy by unsealed instrument, as collateral security for debt of F., and instrument and policy were delivered to creditor. No question was made as to validity of transfer. *Held*, 1st. That policy was executed, irrevocable, voluntary settlement in favor of wife and children in being when it was taken out. 2d. That F. and M. could pledge or assign policy to extent of their interests in it. 3d. Policy being for $5000, that one-fifth was due to creditor and one-fifth to each of four children. 4th. One of children having died a minor before F., that one-fifth due this child should be paid to his legal representative, if any, and if none, to administrator of F., child's father and next of kin. *Ins. Co.* v. *Baldwin*, 800.

INSURANCE.

20. Y. was member of Mutual Benevolent Association, whose object was to provide and maintain fund for benefit of widows and orphans of deceased members. Its articles provided that upon death of member, secretary should notify each member, who should within thirty days of date of notice pay to secretary $1.10, and in case of failure to pay, his name should be dropped and he should forfeit all claims upon association; but any member might be reinstated by giving satisfactory excuse himself or through his representative to directors; also that notice directed and sent to post-office address or residence of member as recorded in secretary's books, should be deemed legal notice. On August 29th 1882, notice of two assessments was sent to post-office address of Y. No payment or tender of assessments was made, and Y. died two days after expiration of thirty days. He was taken sick September 13th 1882, and was for most of time between that date and time of his death, delirious and entirely incapable of attending to business. In action by widow, *held*, 1st. That obligation to pay death assessment was personal to member, and in case of his default he ceased to be member, and forfeited all claim upon association. 2d. That receipt of notice need not be proved. 3d. That the sickness did not excuse default. *Yoe* v. *Mut. Ben. Ass.*, 546.

21. ASSIGNMENTS OF LIFE INSURANCE POLICIES, 753.

II. *Fire.*

22. Temporary illegal use of property insured, not contemplated at time of taking out policy would only vitiate it during time of such illegal use, even if policy is by its terms to become "void," in case of such illegal use; and when that stopped it would revive. *Hinckley* v. *Ins. Co.*, 770, *and note.*

23. Absolute condition in policy on dwelling-house that policy shall be void if building "be vacated or left unoccupied" avoids policy, although vacation results from permanent removal of tenant of insured during running of lease, without knowledge or consent of landlord. *Farmers' Co.* v. *Wells*, 485.

24. Absence at time of loss and failure to return in time is sufficient legal excuse for assured's not furnishing proofs of loss, within thirty days thereafter, signed and sworn to by him, as required by policy; in such case proofs may be signed and verified by agent having charge of his business. *German Co.* v. *Grunert*, 485.

25. In such case where notice and proofs were furnished within required time by the agent, and company returns same with objections, and they are amended, and afterwards sent back for amendment, several times, this will be held waiver by company of objection that such notice and proofs were not delivered in proper time. *Id.*

26. Where policy provides that any false swearing or attempt at fraud, "or if there shall appear any fraud in the claim, by false swearing or otherwise," shall avoid such policy, company, in order to avail itself of the defence, must show that assured *knowingly* swore falsely or said or did that which is claimed to be fraudulent. *Ins. Co.* v. *Grehan*, 345.

27. Policy reserved to insurer right to repair or rebuild upon notice of such intention within 90 days after proof of loss. After such proof insurer served notice of such intention "acting jointly with other insurance companies claiming to be interested." There were ten policies in as many companies, eight of which served like notices. Before time to rebuild expired, but while insurers were taking steps for that purpose, plaintiff compromised with all of the eight except defendant for amount of money in aggregate much less than amount of these policies. Defendant's policy provided that assured should not recover of company in greater proportion of loss or damage than amount thereby insured bears to whole sum insured on said property, without reference to solvency or liability of other companies. *Held*, 1. That liability of defendant was several, and that service of above notice converted respective policies from contracts for money indemnity into contracts of indemnity payable in repairing or rebuilding to be performed in time named in policy, but if no time is specified then within reasonable time. 2. That after policy had been thus converted into building contract, insured might settle with some of companies without releasing others from their proportionate share of loss. 3. That such proportionate share was

INSURANCE.
to be ascertained without regard to settlement by or insolvency or non-liability of other companies. *Good* v. *Ins. Co.*, 800.

INTEREST. See APPORTIONMENT. ATTORNEY, 2. INSURANCE, 15, 16. USURY.
1. Receipt of, in advance upon overdue promissory note, from maker, does not of itself import such giving of time as will discharge surety. *Haydenville Bank* v. *Parsons*, 479.
2. Payments and endorsement of payments, upon promissory note in which no rate of interest is expressed, of interest at seven per cent., in respect of time after note has become overdue, do not amount to change of contract, or satisfy statutory requirement of agreement in writing to bind maker to pay that rate in future. *Id.*

INTERNATIONAL LAW. See CRIMINAL LAW, 10–12.
1. Treaty is primarily compact between independent nations, depending for its enforcement on their honor and interests. Its infraction becomes subject of international reclamation and negotiation, which may lead to war. With this courts have nothing to do. *Head* v. *Money Cases*, 213.
2. But treaty may also confer private rights on citizens or subjects of contracting parties enforceable in court of justice. United States Constitution makes treaty, while in force, part of supreme law of land; but in this respect, so far as provisions of treaty can become subject of judicial cognisance in courts of country, they are subject to such acts as Congress may pass for their enforcement, modification or repeal. *Id.*

INTOXICATING LIQUORS. See CONSTITUTIONAL LAW, 22. CRIMINAL LAW, 3.
1. At trial of one indicted for keeping liquor nuisance, it is not error to refuse to allow juror to be asked on his *voire dire* whether he has contributed money for prosecution of persons generally who are charged with keeping such nuisances. *State* v. *Hoxsie*, 797.
2. If club of men buy and own in common liquors, to be delivered by their steward only to actual members upon receipt of checks previously obtained from him at five cents each, such delivery, *bona fide* made, is not illegal, and he is not indictable for unlawfully keeping liquors with intent to sell. *Commonwealth* v. *Pomphret*, 65.

JUDGMENT. See ACTION, 5, 9. CORPORATION, 5–7, 21. COURT. ERRORS AND APPEALS, 4. EVIDENCE, 2. MORTGAGE, 18. SET-OFF, 1, 3.
1. Action can be maintained on domestic, although in full force, and time within which execution can issue has not expired. *Hummer* v. *Lamphear*, 41, *and note*.
2. Where circuit court adjourned over thirty-two days, it was held that period intervening in which court did not transact business was to be regarded as vacation, within meaning of that word in sect. 66, of Illinois Practice Act, authorizing judgments by confession in vacation. But the word is not to be understood as embracing all the time court is not actually in session, or as embracing time of adjournment from day to day. *Conkling* v. *Ridgely*, 485.

JUDICIAL SALE. See DEBTOR AND CREDITOR, 4. UNITED STATES, 4.
1. Execution on judgment pending appeal is irregular, but not void; sale of land thereon, if not set aside on motion by defendant, made in proper time, will pass his title. *Shirk* v. *Road Co.*, 145.
2. Defendant only, not those acquiring title from or through him, can question validity of sale of land under execution for irregularity; especially in collateral proceeding. *Id.*

JURISDICTION. See REMOVAL OF CAUSES, 7. UNITED STATES COURTS, 4.
Objection to, may be raised at any stage of proceedings by motion to dismiss. *Nile* v. *Howe*, 680.

JUROR AND JURY. See CRIMINAL LAW, 15. TRIAL, 2, 5.

LANDLORD AND TENANT. See INSURANCE, 23. NUISANCE. TENANTS IN COMMON, 2. TRESPASS, 1.

1. It is duty of farm tenant by force of law to make all needed current repairs on fences, and action cannot be maintained against landlord by adjoining land owner, whose colt escaped through insufficient division fence, although fence was in same condition at time of accident as when tenant went into possession. *Blood* v. *Spaulding*, 683.

2. Lessee of room in block covenanted to keep premises in good and constant repair. Building was thereafter erected on adjoining vacant lot by owner thereof, not the lessor, whereby demised premises were, to great extent, cut off from light and ventilation, and rendered damp and unhealthy, but were capable of being made tenantable by repairs. *Held*, that lessee was not authorized to abandon lease. *Hilliard* v. *Gas Coal Co.*, 621.

LARCENY. See CRIMINAL LAW, VII.

LEASE. See DEBTOR AND CREDITOR, 2. EVIDENCE, 21. LANDLORD AND TENANT.

LEGACY. See WILL, 11.

LIBEL. See SLANDER AND LIBEL.

LICENSE. See MUNICIPAL CORPORATION, 1, 2. WAY, 4, 5.

Granted to two or more persons to keep billiard or pool table, or bowling alley, for hire, is available to each. *Hinckley* v. *Ins. Co.*, 770.

LIEN. See BANK, 1. MORTGAGE, 3, 4. RAILROAD, 6, 7. SHIPPING.

LIFE TENANT. See POSSESSION, 1.

Testator devised residue of his estate to his wife in trust for herself for life, with remainder over. Just before his death he entered into copartnership, which was to continue for three years, even in case of his death. *Held*, that profits derived from testator's share in partnership belonged to life tenant as income. *Heighe* v. *Littig*, 801.

LIMITATIONS, STATUTE OF. See EJECTMENT, 2. FORMER RECOVERY, 4. MUNICIPAL CORPORATION, 7.

1. Law of state in which suit is brought determines bar of statute, although cause of action originated in another state. *Stirling* v. *Winter*, 213.

2. Statute of Vermont not a defence when cause of action accrued in another state, unless both parties resided there at that time. *Troll* v. *Hanauer*, 622.

3. Maintaining nuisance for twenty years does not give prescriptive right. *New Salem* v. *Eagle Mill*, 485.

4. Action by person who suffers peculiar damage from public nuisance, may be maintained against person continuing it, although recovery for injury done by creation of nuisance is barred by statute. *Id.*

5. Mutual account is one based on course of dealing, wherein each party has given credit to the other, on faith of indebtedness to him. If the items on one side are mere payments, the account is not mutual. *Gunn* v. *Gunn*, 346.

6. In case of mutual accounts statute does not begin to run until last just item in account on either side. *Id.*

7. Doctrine of mutual accounts stated. Such a course of dealing may be terminated by either party at any time by anything plainly showing determination to deal no longer that way. *Id.*

8. If person takes possession of land which he knows does not belong to him or anyone from whom he purchases, no prescription will run in his favor, however long he may hold possession. *Cowart* v. *Young*, 346.

9. A. transferred to B. certain corporate stock, which B. held as chattel mortgage. After default by A. and after B. had subsequent to such default held and treated the stock as his own for more than six years, A. filed bill in equity to redeem. *Held*, that bill could not be sustained. *Greene* v. *Dispeau*, 419.

10. Every continuance of a nuisance is a renewal of the wrong, and is actionable, until abated. It is nuisance to keep up sewer which, when it rains, throws upon lot and near owner's residence, excrement bad-smelling and hurtful to health. *Reid* v. *Atlanta*, 346.

LIMITATIONS, STATUTE OF.

11. To remove bar of statute an acknowledgment of a subsisting debt must be *unqualified*; and if the acknowledgment be coupled with qualified or conditional promise, there must be proof that the condition has been performed, or the event happened, by which the promise is qualified. *Parker* v. *Butterworth*, 77.

12. Payment on account by one joint promissor will not remove bar of statute as against co-promissor in whose favor statute had attached when payment was made. *Id.*

13. Acts constituting real and personal property of married woman her separate estate and authorizing her to sue and be sued alone, *held*, not to repeal by implication saving clause in statute securing to married women right to maintain actions within respective times limited after such disability is removed. *Ashley* v. *Rockwell*, 801.

14. Statute should begin to run against action for malicious prosecution of civil suit from time civil suit terminates, by analogy to action for malicious prosecution of criminal suit, except in cases of seizure of personalty under execution, where litigation is protracted by claim of person whose property is seized, when action accrues and statute begins to run at time of seizure. *Printup* v. *Smith*, 146.

LIS PENDENS. See NOTICE, 3.

While proceedings were pending against A. and B., co-partners, for appointment of receiver under proceedings in insolvency, A. made an assignment of his individual property to C. *Held*, that receiver was entitled to order upon A. and C. for conveyance of assigned property. *Petition of Arnold*, 801.

LUNATIC. See HUSBAND AND WIFE, 1. INSANITY.

MALICIOUS PROSECUTION. See ACTION, 9. LIMITATIONS, STATUTE OF, 14.

1. Action for, in obtaining and levying order of attachment upon personal property, may be maintained against corporation. *Western Co.* v. *Wilmarth*, 486.

2. In such action where it is alleged in petition that stock of goods was levied on the attachment and withheld from owner for about two months, and thereby his business completely broken up, it is not error to receive evidence showing value of stock; that owner was doing business from $6000 to $7000 per annum, with net profit of $1500 to $1600 per year, and that on account of attachment proceedings his business was broken up, as in such case exemplary damages are allowable. *Id.*

3. Action for damages does not lie for arrest upon civil process of witness (without writ of protection) returning home from court. Remedy consists in application for discharge; most expedient mode being by summary motion. *Smith* v. *Jones*, 78.

4. Person ordering such arrest of witness may be punished for contempt. *Id.*

5. Person who has procured arrest and imprisonment of another on lawful warrant is not liable to action for false imprisonment, although his object was to enforce payment of debt. *Mullen* v. *Brown*, 547.

6. Action for false arrest does not lie against officer for serving precept issued by inferior magistrate, if magistrate has jurisdiction of offence alleged, and precept indicates a proper cause. Amendable irregularities do not vitiate. To render officer liable precept must be absolutely void. *Elsemore* v. *Longfellow*, 146.

7. Judicial finding in first action in favor of defendant in malicious prosecution suit, and against other party, by court of original jurisdiction, is conclusive of probable cause, when not procured by unfair means, even if reversed on appeal. *Welch* v. *Railroad*, 420.

8. Where defendant claims that he acted under advice of counsel, it is for jury to say whether the attorney consulted being the attorney in civil suit to recover of plaintiff the sum alleged in criminal proceeding to have been embezzled, was therefore an improper person to consult. *Watt* v. *Corey*, 78.

MANDAMUS. See TELEPHONE, 1, 3.

1. Right to writ of, to enforce performance of official act by public officer depends upon his legal duty and not upon his doubts. *State* v. *Turpen*, 622.

MANDAMUS.

2. Will not issue to inferior court to compel it to conform its judgment to finding in case, when motion to amend judgment in that particular has been entertained, and refused because court was of opinion that judgment had been correctly recorded. *Ex parte Morgan*, 420.

3. Where duty rests upon railroad company to construct viaduct over its tracks at crossing of public street in city, mandamus will ordinarily lie; and the action may in some cases be prosecuted in name of state by county attorney. *State* v. *Railroad*, 276.

MARRIAGE. See HUSBAND AND WIFE, I.

MASTER AND SERVANT. See CHARITY, 1. CORPORATION, 18, 19. MUNICIPAL CORPORATION, 8. NEGLIGENCE, 41. PARENT AND CHILD, 4. TORT, 4. TRUST AND TRUSTEE, 4.

1. Master and mate of vessel are fellow-servants. *Mathews* v. *Case*, 146.

2. So, also, are foreman and laborers engaged in repairing dam for log-driving company. *Doughty* v. *Penobscot Co.*, 146.

3. Train despatcher not fellow-servant with employees in charge of train. *Darrigan* v. *Railroad*, 452, *and note.*

4. It is duty of railroad company to devise some suitable and safe method of running special trains, so as to avoid collision, and where method employed is to have trains controlled by train despatcher, latter as to employees in charge of train stands in place of company. *Id.*

5. Conductor of railway train not fellow-servant of engineer, but represents company. *Chicago, &c., Railway Co.* v. *Ross*, 94, *and note.* See *infra*, 8, 10, and 11.

6. Liability of master for injury to servant, generally. *Id., note.*

7. Where person placed his mare at livery, and instructed servant of proprietors of stable to take her out for exercise, such, however, being no part of the contract of livery, and while the servant had her out for such purpose, she died, proprietors of stable cannot be held liable to owner, though mare died in consequence of immoderate riding and carelessness of their servant. *Adams* v. *Cost*, 346.

8. Head blacksmith of railway company was directed with other employees to go on wrecking train to certain place to remove wreck. Train was under charge of engineer, who acted also as conductor, and by his negligence train collided with another, and blacksmith was killed. *Held*, that they, as well as the other employees on train, were fellow-servants. *Abend* v. *Railroad Co.*, 277. See *ante*, 5.

9. On single track street railroad north-bound car ran beyond its side track, and passenger at request of driver, assisted in pushing it back. While so engaged, and without fault, he was injured by carelessness of driver on south-bound car. *Held*, 1. Plaintiff did not engage in service of company as mere volunteer. 2. Under circumstances he cannot be considered as fellow-servant with driver of south-bound car. *McIntire Rd.* v. *Bolton*, 486.

10. Car inspectors and yard hand are not fellow-servants; and railway company is responsible for negligence of former by which latter is injured, being bound to use reasonable diligence to keep machinery and instrumentalities for its employees suitable and safe. *Tierney* v. *Railway Co.*, 669. See *ante*, 5.

11. In such case it will not be presumed that plaintiff assumed risk of negligent inspection, unless it appear that he undertook to handle cars in course of his employment without reference to inspection. *Id.*

12. Railroad corporation is liable to employee for injury occasioned by being struck by bridge-guard, if guard is out of its proper position because of wearing out of rope attached to guard, and corporation has not made suitable provision to have notice of, and to remedy, defects liable to be occasioned by its use. *Warden* v. *Railroad Co.*, 277.

13. One who contracts with mining company to break down rock and ore for certain distance to disclose vein, at stipulated price per foot, company to furnish steam drill and keep drift clear of rock, as the contractor broke it down, is to be regarded as contractor with and not servant of company. He is not fellow-

MASTER AND SERVANT.
servant of superintendent of company under whose direction work is performed. *Mayhew* v. *Sullivan Co.*, 146.

14. Passenger in hired coach may, by words or conduct at the time, so sanction or encourage special act of rash or careless driving as to debar him from suit against third person for injury resulting from co-operating negligence of both parties, or make him responsible for injury done by driver. But the negligence of the driver, without some co-operating negligence on his part, cannot be imputed to passenger. *N. Y., L. E. & W. Co.* v. *Steinbrenner*, 684.

15. In action by workman against employer, for personal injuries caused by fall of staging upon which he was at work, it was in dispute whether defendant undertook to furnish staging as a whole, or whether he undertook merely to provide, and did provide, materials from which fellow-servants of workman erected staging. Judge instructed jury that master is liable to servant for injuries resulting from defective materials negligently furnished by him, although negligence of fellow-servant contributes to accident, and on question whether obligation of master extended to furnishing of staging as completed structure, read and affirmed on their respective theories the instructions requested by each party. *Held*, that plaintiff had no ground of exception. *Clark* v. *Soule*, 276.

MECHANICS' LIEN. See UNITED STATES, 4, 5.

1. Ordinary mechanics' lien laws should not be interpreted as giving a lien upon roadway, bridges or other property of railroad company that may be essential in operation and maintenance of its road. *Commissioners* v. *Toomey*, 547.

2. Is purely statutory remedy and while courts construe laws liberally and allow proper amendments, yet all proceedings must be in substantial accord with main requirements of statute. *Kenly* v. *Sisters of Charity*, 802.

MERGER. See SET-OFF, 3.

MINES AND MINING.

1. One member of mining partnership has right, without consulting his associates, to sell his interest in partnership to stranger, and such sale does not dissolve partnership. *Bissell* v. *Foss*, 420.

2. Discoverers of lode or vein posted at point of discovery plain sign, body of which was: "We, the undersigned, claim 1500 feet on this mineral-bearing lode, vein or deposit." *Held*, that this meant 750 feet on course of lode in each direction from that point, and that notice was not deficient. *Erhardt* v. *Boaro*, 347.

3. Grant of patent by United States for land located or claimed for valuable deposits, is a determination binding on rival claimant, whether he asserts his claim or not; and if patent includes that part of rival's claim wherein was situated his discovery shaft, where all his labor was done, his whole location falls. *Gwillim* v. *Donnellson*, 684.

MINOR. See INFANT. GUARDIAN AND WARD. PARENT AND CHILD.

MISREPRESENTATION. See FRAUD, 3. EQUITY, 21.

MISTAKE. See EQUITY, 2, 14.

MORTGAGE. See ASSIGNMENT, 3–5, 10, 11. BAILMENT, 5. BILLS AND NOTES, 8, 10. CORPORATION, 5, 6, 20. NOTICE, 1, 5. RAILROAD, 6, 7. RECEIVER, 1. SALE, 2. TAX AND TAXATION, 1. USURY, 1.

I. *Generally.*

1. Deposit of, for record, in recorder's office, sufficient to protect mortgagee. *Case* v. *Hargadine*, 78.

2. Where possession is held by mortgagee adversely to mortgagor, principles of account are quite different from what they are when possession is held in acknowledged character of mortgagee, and are applied with more or less rigor against wrongdoer, according to circumstances. *Booth* v. *Packet Co.*, 548.

3. Presumption is that mortgage first recorded is first lien; to overcome

MORTGAGE.
such presumption, it must be proved that the mortgagee, at or before time he took his mortgage, had knowledge of the mortgage first in date. *Hendrickson* v. *Woolley*, 347.

4. And if mortgagee of mortgage first in date has agreed with mortgagor to keep his mortgage off record, in order that mortgagor may borrow more money on the property to be secured prior to such mortgage, and such agreement be made known to mortgagee of mortgage second in date, but first of record, at or before its execution, priority of mortgage first in date is waived. *Id.*

5. Where senior mortgagee forecloses his mortgage, and sells property, without making junior mortgagee a party, or giving him notice, purchaser, whether senior mortgagee or stranger, acquires his title subject to right of redemption by junior mortgagee; and same rule applies where junior mortgagee has assigned all his interest in mortgage and the notes secured thereby, to third person. *Holliger* v. *Bates*, 802.

6. Married woman mortgaged her property to secure note of husband given to raise money to pay debt of lumber company, of which he was president. The money was raised by loan from insurance company on note of lumber company at one year, with the mortgage as collateral, and insurance company had knowledge that mortgaged property was designed by mortgagor to serve as surety for payment of loan. Without mortgagor's knowledge or consent, note of lumber company at end of year was renewed, and soon thereafter surrendered, and a new note, with other and different parties, was substituted, and twice renewed, and then extended. *Held*, that mortgage was released. *People's Ins. Co.* v. *McDonnell*, 213.

II. *Chattels.*

7. Mortgagee of chattels which are insured by policy providing that loss shall be payable to him as his interest may appear, is entitled to insurance money to amount of mortgage debt, as against creditors of mortgagor garnishing insurance company after loss, although mortgage was not properly filed. *Mawson* v. *Ins. Co.*, 749.

8. Where domestic animals are mortgaged during period of gestation, offspring when born will, as between parties, be covered by mortgage; but not as against *bona fide* purchaser or encumbrancer, without notice of facts and after period of nurture has passed. *Funk* v. *Paul*, 749.

9. One who takes mortgage of chattels to secure pre-existing debt which is not yet due is not entitled to protection as *bona fide* purchaser or encumbrancer. *Id.*

10. Description of property as "Forty-one Berkshire hogs, and sixty-five grain sacks," is not so uncertain as to invalidate mortgage. *Knapp* v. *Deitz*, 748.

11. Mortgage of chattels furnished by mortgagee to mortgagor and to be used and consumed by him for benefit of mortgagee, is not void as to creditors of mortgagor. *Id.*

12. Mode of alienation of personal property is governed by law of place where owner resides, and where property is situated, and is not affected by rule requiring change of possession; thus chattel mortgage executed in New York, and valid there, is valid in Vermont when owner goes into latter state with property. *Norris* v. *Sowles*, 685.

13. After breach of condition mortgagor has no attachable interest in the property. *Id.*

III. *Of Realty.*

14. Failure to index mortgage which is recorded will not affect its lien or validity. *Barrett* v. *Prentiss*, 685.

15. Payment by mortgagor after he had sold and quit possession, rebuts presumption of payment arising from lapse of time, not only as to him, but his grantees affected with constructive notice of mortgage. *Id.*

16. One who sells property and concurrently takes purchase-money mortgage, retains such interest therein as may be taken in equity and applied on debt secured by unrecorded mortgage given by vendor. *Association* v. *Clark*, 802.

MORTGAGE.

17. Purchaser from mortgagor of lands encumbered by unrecorded mortgage, takes title free from such encumbrance, even if he has full knowledge and notice of its existence, and that it is unpaid. *Association* v. *Clark*, 802.

18. If creditor procures judgment against such purchaser after such unrecorded mortgage has been recorded, his lien is valid as against such mortgage *Id.*

19. Where money is loaned upon forged mortgage supposed to be valid, for purpose of discharging prior valid mortgage, which is done, mortgagee of void mortgage or his innocent vendee in regular course of business, may be subrogated to rights of prior mortgagee, there being intervening liens. *Everston* v. *Bank*, 487.

20. If owner of land subject to two mortgages made by predecessors in title, conveys it, reserving easement therein, to first mortgagee, by warranty deed, in which grantee assumes both mortgages, first mortgage is extinguished, and second mortgagee may maintain writ of entry against first mortgagee to foreclose second mortgage. *Kneeland* v. *Moore*, 548.

21. Where sale of land is made, separate portions of which are subject to separate mortgages, and vendee, as part of price, assumes payment thereof, and subsequently vendor is compelled to pay one of them, vendee cannot maintain bill against vendor to redeem land from such mortgage without also paying the other mortgage. *Wells* v. *Tucker*, 536.

22. Vendor executed release of his purchase-money mortgage, and took second mortgage for balance unpaid. Release and second mortgage were intrusted to vendee to record; vendee recorded release but not the second mortgage, which was returned to vendor, and by him recorded, after another mortgage made after the second mortgage without consideration, had been recorded and assigned to *bona fide* purchaser without notice. *Held*, that last mortgage was first lien. *Ramsey* v. *Jones*, 622.

23. Purchaser of mortgaged premises from mortgagor, who assumes payment of mortgage debt, or who knowingly accepts conveyance reciting his assumption of same, will at once become personally responsible to mortgagee, and a release from mortgagor will not avail him. *Bay* v. *Williams*, 486.

24. Acceptance of conveyance of mortgagor's equity of redemption, is sufficient consideration for promise by grantee to assume and pay mortgage debt. *Id.*

25. Express assent of beneficiary is not essential to his right to avail himself of promise by one, upon valuable consideration moving from another, to pay debt of that other to third person. *Id.*

MUNICIPAL CORPORATION. See ACTION, 16, 17. CONSTITUTIONAL LAW, 12, 13, 19–22, 30, 33. CONTRACT, 1. HIGHWAYS, &c., 2, 9, 10. NEGLIGENCE, 1, 6, 12. OFFICER, 1, 2. TAX AND TAXATION, 5, 6. WILL, 7, 8.

I. *Generally.*

1. Power to regulate wagons, drays, &c., conferred by Ark. Mun. Corp. Act of March 9, 1875, includes power to license. *Fort Smith* v. *Ayers*, 78.

2. Such license fee, when imposed as mere police regulation, is not a tax upon an occupation; if so large as to have been manifestly imposed for revenue, it is, in effect, a tax, and not within statute. *Id.*

3. Common council of city, made by charter sole judge of election and qualifications of its own members, having once investigated and seated a member, cannot at subsequent meeting order second investigation. *State* v. *City*, 749.

4. Shade trees on sidewalks and streets of city belong to it, and in grading streets and sidewalks, may be removed if necessary; and adjoining property owner certainly cannot recover therefor unless damage was caused by negligence in the work. *Castleberry* v. *Atlanta*, 348.

5. City which undertakes celebration of holiday, under authority of statute providing that city council may appropriate money for such purpose, exclusively for gratuitous amusement of public, is not liable for negligence of its servants in discharging fireworks for purposes of celebration. *Findley* v. *City*, 214.

6. Board of county commissioners is proper party to bring action to reimburse county for expense incurred by such board in rebuilding bridge upon

MUNICIPAL CORPORATION.
county road within limits of village, which bridge had been injured by railroad company in construction of its road. *Commissioners* v. *Railroad Co.*, 802.

7. Statute of Limitations does not begin to run against such action until complete restoration of bridge. *Id.*

8. Foreman of engine company in fire department of Baltimore was dismissed by fire commissioners for disrespect to superiors. In action against city to recovery salary since disinissal, *held*, that defendant could not be held responsible for determination of commissioners; and that their right of removal being absolute, if there were no arrears of salary at time of dismissal, any wrong done by commissioners must be redressed by action against them. *Baltimore* v. *O'Neill*, 803.

9. In relation to powers and privileges which are to be exercised by municipal corporation for improvement of territory within corporate limits, and as to which pecuniary and proprietary interests of individuals are represented, liability of corporation for negligence is largely, if not entirely, measured by liability of individuals for similar acts; but with respect to police powers, such as suppressing riots and unlawful assemblages, such corporation is, in absence of statutory provision to contrary, agent of state, and not liable for failure to perform or negligence in performing duties in that particular imposed by statute. *Robinson* v. *Greenville*, 347.

10. May acquire realty by possession and for other than municipal purposes. *New Shoreham* v. *Ball*, 420.

11. In ejectment wherein plaintiff's title rested on possession for more than twenty years, the *locus* was a long sandy waste along the seashore, and defendants were mere intruders. Plaintiff, a municipal corporation, had by vote let the *locus* year by year from 1829 to 1875. Court instructed jury that to show title town must prove open, adverse, actual and exclusive possession for twenty continuous years, and that the votes were not sufficient unless lessees took actual possession, though town need not show that possession of its lessees was continuous in sense of their being on premises all the time, and that if lessees were in possession of any part of *locus* under the votes, it might be considered they were in possession of whole. *Held*, that instructions did not entitle defendants to new trial; and that passage over *locus* by inhabitants of town to get seaweed or sand, or use of same for temporary deposit of seaweed, would not amount to interruption of possession. *Id.*

12. There being evidence to show that *locus* was known as the East Beach, *held*, that it was for jury to determine whether or not town let *locus* by name of the East Beach. *Id.*

II. *Bonds of.*

13. Municipal bond issued under authority of law for payment, at all events, to named person or order, of fixed sum of money at designated time therein limited, being endorsed in blank, is negotiable security, and its negotiability is not affected by provision of statute under which it was issued that it should be "payable at the pleasure of the district at any time before due." *Ackley School District* v. *Hall*, 277.

14. Consistently with Act of March 3, 1875, determining jurisdiction of United States Circuit Courts, the holder may sue therein without reference to citizenship of any prior holder, and unaffected by circumstance that municipality may be entitled to make defence based upon equities between original parties. *Id.*

15. By city charter its council had power to levy taxes on all property within city "to pay the debts and meet the general expenses of said city, not exceeding fifty cents on each one hundred dollars per annum on the annual assessed value thereof." Subsequently the city was authorized to subscribe to capital stock of railroad, and issued bonds in payment of stock it subscribed for. *Held*, that authority to make the subscription carried with it right and duty to levy and collect special tax, if necessary to pay subscription. *Quincy* v. *Jackson*, 347.

MUTUAL BENEFIT ASSOCIATION. See INSURANCE, 20.

NATIONAL BANK. See UNITED STATES COURTS, 4.

That taxation of shares of, imposed by authority of state within which association is located, is no heavier than that imposed upon state bank shares, or state saving institutions, does not prevent its being an illegal discrimination, under sect. 5219 of Rev. Stat., if it results in capital so invested not being upon same footing of substantial equality in respect of taxation by state authority as other moneyed capital in hands of individual citizens, however invested. *Boyer* v. *Boyer*, 348.

NATURALIZATION. See HUSBAND AND WIFE, 11.

NAVIGABLE STREAM. See CONSTITUTIONAL LAW, 26. HIGHWAYS, &c., 3.

NE EXEAT. See EQUITY, 22.

NEGLIGENCE. See ACTION, 4, 7, 23. ATTORNEY, 1. BANK, 4. COMMON CARRIER, 7, 12, 17, 19–21. FORMER RECOVERY, 2. FRAUD, 1, 2. HIGHWAYS, &C. MASTER AND SERVANT. MUNICIPAL CORPORATION, 4, 5, 9. PARENT AND CHILD, 4. RAILROAD, 2–7. TELEGRAPH.

1. A town is not required to render way passable for entire width of located limits. *Morse* v. *Belfast*, 803.

2. In determining whether way is safe and convenient within statute, it is enough that it is so in view of such casualties as might reasonably be expected to happen to travellers. What imperfections will render town liable is generally for jury. *Id.*

3. In action for personal injuries received by reason of defect in way question, whether plaintiff or driver was in exercise of ordinary care, is for jury. *Id.*

4. Failure to look or listen on crossing railway track will bar recovery, notwithstanding negligence of railroad company in failing to give signals. *Union Pac. Railroad* v. *Adams*, 487.

5. Person who, in passing from ferryboat to dock, puts himself in so dense a crowd that he cannot see his footing, and gets his foot crushed between boat and dock, has no cause of action against ferry company. *Dwyer* v. *Railway Co.*, 749.

6. When injury results to traveller on highway from combination of two causes, one defect in highway and other a natural cause or pure accident (ice), town is liable; provided, injury would not have been sustained but for defect in highway. *Hampson* v. *Taylor*, 685.

7. In action for personal injuries received by collision at railroad crossing, evidence will not be received to show general character and habits of traveller for carefulness, though injuries occasioned death before he could tell how accident happened, and no one saw him at time of collision. *Chase* v. *Railroad Co.*, 803.

8. In such case natural instinct for self-preservation does not afford proof of absence of contributory negligence, though it may give force to facts already proved. *Id.*

9. For injury resulting from fall into sidewalk of public street, communicating with cellar of adjoining building, and left without guard or notice of danger, owner and occupier of premises is liable. *Houston* v. *Traphagen*, 749.

10. Where it appeared that injured person stepped into unguarded opening while his attention was attracted by objects in shop window above opening, contributory negligence is not necessarily inferred. *Id.*

11. Where it is claimed that fall produced or excited disease, it should appear, not only that fall was possible cause of disease, but other causes should be so excluded and circumstances should be such as to leave reasonable inference that fall was actual cause. *Id.* See *infra*, 40.

12. Where city contracted for construction of cistern in street, and before its completion horse fell into it and was killed for want of sufficient protection around and over excavation, *Held*, that city was liable, although it only reserved right to see that work was done according to specifications. *City* v. *Nending*, 214.

13. Contractor entered into written contract with trustees of estate to take down an entire building belonging to said trustees, "or so much thereof as the trustees may request." "All of said work to be done carefully, and under the

NEGLIGENCE.
direction and subject to the approval of the trustees." *Held*, that he was not an independent contractor. *Linnehan* v. *Rollins*, 214.

14. In Maine in actions against railroad companies for injuries to persons, whether in form civil or criminal, burden is upon party prosecuting to show absence of contributory negligence. *State* v. *Main Co.*, 147.

15. One in full possession of his faculties, who undertakes to cross railroad track at moment train is passing, or when train is so near that he is not only liable to be, but is in fact struck by it, is *prima facie* guilty of negligence. *Id.*

16. In prosecution by indictment, against railroad company for negligently causing death of person at crossing, the amount of forfeiture between minimum and maximum sums fixed by statute, should be assessed by jury. *Id.*

17. Minor child, who being *sui juris* as to reasonable care of her person and safety, lawfully and properly enters into conveyance driven by her parent, and without fault on her part is injured by negligence of driver of another vehicle, is not prevented from recovering damages because her parent has, by his negligence, contributed to injury. *Railway Co.* v. *Eadie*, 706, *and note.*

18. If track of railroad company is put in position where trains, when close to their transit over public street or road cannot be seen, that is an extra danger calling for more than ordinary cautionary signals; merely ringing bell not sufficient. *Railroad* v. *Randel*, 686.

19. Where traveller was crossing in wagon, at such a place, and flagman did not notify him of coming of train until after it had begun to cross tracks, and traveller then misunderstood warning and went forward when he ought to have retreated, *Held*, that such misunderstanding should not be imputed to him as negligence. *Id.*

20. It is duty of person about to cross railroad track, to approach cautiously, and endeavor to ascertain if there is present danger in crossing; and when track and crossing are so situated, that approach of train cannot be seen, it may be duty of person about to cross, to stop and look for train. *Pennsylvania Co.* v. *Franer*, 622.

21. Contributory negligence wholly a question for jury. *Id.*

22. It is not contributory negligence *per se* for passenger to ride on lower step of front platform of crowded street-car without objection by driver or conductor. *Railway Co.* v. *Gallagher*, 734, *and note.*

23. Boy of thirteen got upon lower step of front platform of crowded street-car, and rode for long distance as passenger, holding on with one hand. He was finally knocked off by jolting of car, run over and injured. *Held*, that questions of negligence and contributory negligence, taking into consideration age and capacity of lad, were both for jury. *Id.*

24. Absence of guard or fender on front platform of street-car may be considered with other facts in determining company's negligence. Court will not, however, say, as matter of law, that it is negligence on part of company not to furnish such guard. *Id.*

25. General principle is, that where both parties by their negligence directly contribute to accident, neither can recover. But plaintiff who has been negligent or even reckless, may show knowledge, on part of defendant, of his peril and that there was time after such knowledge within which to make effort to save him, and then his own negligence will not prevent recovery. Instance, traveller crossing railroad track without stopping to look and listen. *Maryland Co.* v. *Neuber*, 349.

26. In absence of statutory requirement there is no legal obligation on railroad company to keep flagmen at crossings of public country road. *Id.*

27. Presumption that party acts from incentives of self preservation can only be indulged in absence of proof to contrary. *Id.*

28. Person approaching railway crossing with team, and having reason to suppose that regular passenger train had recently passed from one direction, is not guilty of negligence if he fails to look constantly in that direction, especially when it would be impossible to see or hear approaching train because of obstruction to sight and sound. *Bowen* v. *Railroad Co.*, 147.

29. Instruction that it was duty of person approaching railway crossing to have looked up track, if by so doing he could have ascertained approach of

NEGLIGENCE.
train at *sufficient* distance to have avoided it, is proper. What was such sufficient distance was for jury. *Bowen* v. *Railroad Co.*, 147.

30. Question being whether bell was rung and whistle blown as locomotive approached crossing, evidence that those things were not done at similar crossing three miles distant was admissible. *Id.*

31. Where railroad employee was sent on wrecking train to assist in removing *debris*, and instead of taking his seat in car, in violation of published rule of long standing entered locomotive and took seat with fireman, just in front of latter, where he remained until collision with freight train, and he was killed, *held*, that there could be no recovery, notwithstanding negligence of servant in charge of train. *Abend* v. *Railroad Co.*, 277.

32. It is sufficient to prevent recovery if negligence of person injured or killed materially contributes to injury, whether it contributes to force causing injury or not. *Id.*

33. In case of such voluntary exposure as above there can be no recovery, even though negligence of defendant be gross, if its act be not wanton or wilful. *Id.*

34. Where there is evidence tending to prove negligence on part of defendant, and also evidence from which proper inference to be drawn as to fault on plaintiff's part is doubtful, it should be submitted to jury to determine whether plaintiff was injured by his own fault or that of defendant. *Kelly* v. *Howell*, 215.

35. Contractor agreed with owner of mine to do certain work therein, owner engaging to furnish and put up such props or supports for roof of mine as would render miners secure, whenever notified by contractor that same were necessary. *Held*, that actual knowledge was equivalent to such notice. If overseer of mine acted in behalf of partnership of which he was member, and mine, at time of injury of employee through want of said supports, was in occupation of firm, and the work was being done therein for firm's use and benefit, the partnership will be liable for neglect to furnish and put up supports necessary for safety of contractor's employees. *Id.*

36. Traveller upon street in city, crossing railroad track, has right to presume that trains will not be run at greater rate of speed than is limited by city ordinance. Trial judge did not err in substantially directing jury to take into consideration all objects and things at crossing of street and railroad, and to consider what was done by deceased under all these circumstances, and in saying that if they found that his action was that of person of ordinary prudence, they must also find he was not guilty of contributory negligence. *Hart* v. *Devereux*, 214.

37. Rights of way of railroad company is exclusive property of such company, upon which no unauthorized person has right to be; the mere acquiescence of company in use of same as footway, does not give right of way over track, or create any obligation for special protection: *B. & O. Railroad Co.* v. *State*, 348.

38. Where person trespassing upon such right of way was run over and killed; and place where accident occurred, though within corporate limits of Baltimore, was not upon any street or public way, *held*, that in absence of other negligence, non-compliance with ordinance requiring that when locomotive is used in city limits, a man shall be required to ride on front of same when going forward, and when going backward, on the tender, not more than twelve inches from road bed, did not, *per se*, render company liable. *Id.*

39. Upon street railway separate track was used for cars going in each direction, and frogs were so placed as to prevent cars going in proper direction from being thrown from track while going upon or leaving switch-bridge. Loaded wagon having broken down on bridge upon one of tracks, car approaching thereon was necessarily lifted to other track, and being then driven rapidly upon bridge, was thrown from track, injuring passenger. *Held*, that company was not negligent in not placing frogs so as to prevent car going in wrong direction from being thrown off track, but that question whether the speed was not negligent was for jury. *White* v. *Railway Co.*, 527.

40. To justify assessment of damages for future or permanent disability, it must appear that such disability is reasonably certain. *Id.* See *ante*, 11.

NEGLIGENCE.

41. Plaintiff's horse was frightened at steam shovel, and ran, throwing plaintiff out of carriage and injuring him. Shovel was located on defendant's land and used to obtain gravel to ballast its road-bed near highway in which plaintiff was travelling. Defendant's evidence tended to show that shovel was operated and wholly controlled by one M., an independent contractor, and his servants, although its use was contemplated when contract was made. *Held*, that work being lawful and shovel not a nuisance, until it became so by negligent use, defendant was not liable unless relation of master and servant existed between it and those operating shovel; unless it not only prescribed end but directed means and methods. *Bailey* v. *Railroad Co.*, 685.

NEGOTIABLE INSTRUMENT. See BILLS AND NOTES. GUARDIAN AND WARD, 2. MUNICIPAL CORPORATION, 13.

1. Bonds of the United States are negotiable, though "called," until period at which they were originally made payable; *bona fide* purchaser of such bonds, which had been stolen, has good title. *Morgan* v. *United States*, 350.

2. Where by connivance of clerk in office of assistant treasurer of United States person unlawfully obtains from that office money of the United States, and, to replace it, pays to clerk money which he obtained by fraud from bank, clerk having no knowledge of means by which latter money was obtained, the United States are not liable to refund the money to bank. *State Bank* v. *United States*, 487.

NOTICE. See BANK, 2. BILLS AND NOTES, 9. EVIDENCE, 22. GUARDIAN AND WARD, 2. HIGHWAYS, ETC., 1, 2, 9. MINES AND MINING, 2. MORTGAGE, 3, 5, 17. NEGLIGENCE, 35. PARTNERSHIP, 12, 13. SALE, 6. TELEGRAPH, 6.

1. Mortgage for $2000 was recorded as one for $200. *Held*, that record was no notice of $2000 mortgage. *Hill* v. *McNichol*, 147.

2. When purchaser of real estate, without notice of prior unrecorded deed, for valuable consideration, conveys to one who had notice thereof, title of latter is not affected. *Id.*

3. To subject purchaser to notice of *lis pendens*, in absence of actual notice, purchase must be made from one who was party to suit at time. *Marchbanks* v. *Banks*, 421.

4. Purchaser, though without notice of outstanding equities, is not an innocent purchaser unless he has paid the whole consideration. Payment of part and securing residue, are not sufficient. But he has an equity to reclaim out of property, part innocently paid. *Id.*

5. B. sold to C. real estate, placed him in possession, and agreed in writing to execute to him deed on payment of purchase-money in monthly instalments. Subsequently B. executed to A. mortgage on premises, which was recorded. *Held*, that such mortgage was valid, but subordinate to rights of C.; that C. or his assignee may validly make payments of purchase-money to B. until A. or his assignee by suit or otherwise asserts right to unpaid purchase-money. *Ramsey* v. *Hardy*, 487.

NUISANCE. See LIMITATIONS, STATUTE OF, 3, 4, 10.

1. He who creates nuisance on his own premises cannot escape liability for its continuance by demising the premises, although demise stipulates that tenant shall keep premises in repair. *Ingwersen* v. *Rankin*, 750.

2. Landlord whose tenant during term has created nuisance on premises will be liable therefor as soon as he has right of entry or power to abate; and that liability cannot be evaded by renewal of lease without his having taken actual possession. *Id.*

3. *Quære*, Whether knowledge of existence of nuisance is necessary to establish landlord's liability. *Id.*

OFFICER. See CHARITY, 1. CORPORATION, 18, 19. MALICIOUS PROSECUTION, 6. MANDAMUS, 1.

1. School agent's election and performance of duties, raise no implied promise on part of town to pay him for such services. *Talbot* v. *East Mathias*, 147.

2. In absence of implied contract or statutory provision entitling him to pay

OFFICER.
for official duties rendered, school agent can maintain no action therefor against his town. *Talbot* v. *East Mathias*, 147.
3. Person whose baggage has been lost through negligence of public porter licensed by city, may maintain action on bond given by him to city pursuant to charter and ordinance, for faithful performance of requirements of ordinance and safe delivery of articles entrusted to his care. *City* v. *Raynard*, 215.

ORDINANCE. See NEGLIGENCE, 38. SUNDAY, 5.

OYER. See PLEADING, 2, 3.

PARENT AND CHILD.
1. Parent who wilfully and negligently permits his son eleven years old to possess a loaded pistol, whereby boy injures infant child of another, is not liable in damages therefor. *Hagerty* v. *Powers*, 397, *and note.*
2. Widow marrying acquires domicile of second husband, but does not, by taking children of first husband to live with her there, make that their domicile; they retain the domicile they had, before her second marriage, acquired from her or from their father. *Lamar* v. *Micou*, 148.
3. Parents of infant child lived apart, and mother supported it both before and after lands were devised to it. Upon death of child parents became its sole heirs. *Held*, that in equity mother was entitled to allowance out of child's estate for amount expended by her upon its support. *Pierce* v. *Pierce*, 750.
4. Son, 28 years old, while living with father as hired man on his farm, took father's horse and drove to depot to get one of his own friends. Father did not know that son took horse until after he was gone; but expected and was willing he should do so. Son had driven team before without permission. Horse, tied to post in rear of depot, where father and son were accustomed to hitch, broke away, ran into plaintiff's team and injured him. Referee found that son in tying horse "did not exercise prudence of an average prudent man." *Held*, that father was not liable, but that son was; that license to use horse could not be inferred from fact of former use without leave. *Way* v. *Powers*, 621.

PARTICULAR WORDS AND PHRASES.
1. "Common Law." *Walter* v. *Kirstead*, 141.
2. "Exempted by law." *Petition of Keach*, 421.
3. "Legal Representatives." *Johnson* v. *Van Epps*, 144.
4. "May." *James* v. *Dexter*, 624.
5. "Now sailed or about to sail * * with cargo." *The Wickham*, 209.
6. "Reasonable doubt." *State* v. *Rounds*, 142.

PARTITION. See TENANTS IN COMMON, 1.
1. Not obtainable for land adversely held. *Moore* v. *Gordon*, 623.
2. Where case is fairly within law authorizing partition, the right to it is imperative, and absolutely binding upon courts of equity. *Hill* v. *Reno*, 548.
3. In event that partition could be effected only through sale of premises and distribution of proceeds, that difficulties may arise in adjustment of distribution, or inconveniences, or even possible losses result from change in relations of parties to estate, by reason of sale, will not affect absolute right to partition. *Id.*

PARTNERSHIP. See AGENT, 5. DAMAGES, 6. EXECUTORS AND ADMINISTRATORS, 4. HUSBAND AND WIFE, 29, and p. 366. LIFE TENANT. MINES AND MINING, 1. NEGLIGENCE, 35.
1. Partner cannot bind his copartner by warrant of attorney under his hand and seal in name of firm without previous authority or subsequent ratification. *Ellis* v. *Ellis*, 750.
2. Surviving partner in good faith but unsuccessfully resisting collection of claim against partnership estate, will be entitled to contribution for reasonable expenses of litigation. *Lee* v. *Dolan*, 421.
3. One partner may purchase partnership property, and if purchase is not made with intent to hinder, delay or defraud creditors, and property is such as is exempt, may hold it as against firm creditors. *Burton* v. *Baum*, 79.
4. Not dissolved by death of partner when partnership contract shows con-

PARTNERSHIP.
trary intention; as when it takes form of joint stock association, with transferrable shares, officers, records and general agent to transact business. *McNeish* v. *Oat Co.*, 686.

5. Whether intention was that partnership should not be dissolved by death of partner is for jury to determine, on reasonable construction of articles of agreement interpreted by kind of business contemplated and manner of transacting it. *Id.*

6. Dealing in hulless oats was main business of partnership, under control of general agent, with provision that its "affairs" were to be kept secret. *Held*, that partners might be liable for common oats purchased by agent, although it was not proved they knew of transaction; and that it was their duty to see that their agents transacted no business outside of scope of partnership. *Id.*

7. What agent said to vendor at time of sale as to who partners were and what was their responsibility, was admissible evidence. *Id.*

8. Test of, as between parties themselves, is their intention; as to creditors, old test of participation in profits has been abandoned; question now is whether business has been carried on in behalf of person sought to be charged as partner. *Culley* v. *Edwards*, 623.

9. Where note and mortgage have been entrusted to firm of attorneys for collection, mere dissolution of firm will not release one partner from responsibility to client for money subsequently collected by other partner to whom that business was, by terms of dissolution, transferred. *Waldeck* v. *Brand*, 148.

10. Partners may make any agreement they see proper for management of their joint affairs; but provisions of such agreements are liable, at least in court of equity, to be controlled or qualified, or to be held altogether waived, when assent of all partners may be fairly inferred. *Hall* v. *Sannoner*, 421.

11. One partner is not liable to another for honest mistake of judgment. *Id.*

12. In action against members of partnership upon promissory note, and account annexed for goods sold and delivered, if one of issues is whether plaintiff had notice of dissolution of partnership, notice thereof published in newspaper is competent, in connection with other evidence tending to show that plaintiff saw and read notice. *Smith* v. *Jackman*, 548.

13. In such case plaintiff testified that he had no knowledge of such dissolution until after bringing of action. Partner who alone defended action, was allowed to put in evidence certain bills or statements of account for goods sold and delivered to him personally by plaintiff at various times after cause of action accrued. *Held*, no ground of exception by plaintiff. *Id.*

14. Where member of partnership retires, and his copartners thereupon agree, in good faith, to pay him sum certain as his share of capital, and firm afterwards unexpectedly turns out to have been insolvent at time of said withdrawal; *Held*, that bank from which new firm had borrowed money which they had partly used in making payments to said retiring member, could not in equity charge old firm with money loaned to new, nor retiring partner with moneys obtained from it and used to pay him, retiring partner having paid in discharge of debts of old firm, more than amount received by him as his share of capital thereof. *Penn Bank* v. *Furness*, 488.

PATENT. See EQUITY, 12. TELEPHONE, 3.

1. Receiver of insolvent debtor is entitled to patent right belonging to debtor, and court may order debtor to assign it. *Petition of Keach*, 421.

2. Words "exempted from attachment by law," mean, by statute. *Id.*

3. Novelty and increased utility do not necessarily constitute invention. *Hollister* v. *Benedict Co.*, 278.

4. Where one of two patents for infringement of which suits were brought, expired before United States Supreme Court reversed decrees of Circuit Court dismissing bills, it awarded accounts of profits and damages as to both patents, and a perpetual injunction as to second. *Valve Co.* v. *Valve Co.*, 278.

5. In order to obtain a re-issue for mere purpose of enlarging claim, there must be both a clear mistake, inadvertently committed, in wording of claim and application for re-issue within reasonably short time. *Coon* v. *Wilson*, 350. See *infra*, 7, and 9–11.

6. Use of old device for new purpose, if patentable at all, is only so when

PATENT.
the result is new and different in character from the original; and then the patent will be for an improvement on the original invention. *Blake* v. *City*, 350.

7. Reasonableness of delay in applying for re-issue is for court, and decision of patent office in granting re-issue that delay in application therefor had been satisfactorily explained, will not avail complainant. Unexplained delay of five years too long. *Wallersak* v. *Reihrer*, 549. See *ante*, 5; *infra*, 9–11.

8. In patents for combinations of mechanism, limitations and provisos imposed by inventor, especially such as were introduced into application after it had been persistently rejected, must be looked upon as in nature of disclaimers. *Sargent* v. *Hall Co.*, 421.

9. In case of re-issue whether there has been clear mistake in wording of original claim, is, in general, matter of fact for commissioner; but whether application is made in reasonable time is matter of law, which court may determine by comparing re-issue with original, and if necessary, with records in patent office, when presented by the record. *Maher* v. *Harwood*, 148. See *ante*, 5, 7.

10. No invariable rule can be laid down as to what is a reasonable time. Court will exercise proper liberality towards patentee. By analogy to rule as to effect of public use before application for patent, delay of more than two years would in general require special excuse. *Id.*

11. As, in present case, there was delay of nearly four years, and original patent was free from obscurity, *held*, that delay was unreasonable. *Id.*

PAYMENT. See EVIDENCE, 14, 15, 20. LIMITATIONS, STATUTE OF, 12. MORTGAGE, 15. USURY, 4, 5.

1. Right of creditor to make application of payments to one of several debts applies only to debts then due, and only when debtor himself makes no appropriation. *Gates* v. *Burkett*, 421.

2. Check of one bank upon another to order of buyer was by him endorsed and sent to seller to pay for bill of goods, and seller sent receipt for bill, both supposing check to be good, while in fact there were no funds to meet it at time it was drawn or afterward. *Held*, that in action on account for goods sold and delivered, plea of payment cannot be maintained. *Fleig* v. *Sleet*, 350.

PEDIGREE. See EVIDENCE, 20.

PENALTY. See SUNDAY, 1.

PENSION.

1. Not exempt from execution after it has come to pensioner's hands, notwithstanding U. S. Rev. Stat., sect. 4747. *Friend* v. *Garcelon*, 804, and *Crane* v. *Linneus*, 804.

2. One who loans money to pension claimant to enable him to establish his claim, and to be repaid when pension money is received, is not debarred from recovering his loan by U. S. Rev. Stat., sect. 5485. *Crane* v. *Linneus*, 804.

3. Verbal promise by pension claimant to pay debt when he receives pension, is not such pledge, mortgage, assignment, transfer, or sale of pension claim, as is forbidden by U. S. Rev. Stat., sect. 4745. *Id.*

PHYSICIAN. See CRIMINAL LAW, 25. EVIDENCE, 7–10.

PLEADING. See AMENDMENT, FRAUDS, STATUTE OF, 5. INSURANCE, 8–10, 15. SLANDER AND LIBEL, 2.

1. Replication of fraud to plea of release must set out fraudulent acts relied on. *Friedburg* v. *Knight*, 422.

2. Where pleading does not show that instrument of which profert is made is under seal, oyer is not demandable. *Mealy* v. *Ins. Co.*, 339.

3. Even though oyer be not demandable, if it appears that knowledge of paper is proper or necessary for either party, it is practice of court to make order for its production. *Id.*

4. Where state statute regulates practice in making such application, that practice will be followed in the federal courts. *Id.*

PLEADING.

5. In action for personal tort, amount of damages claimed must be laid in declaration; if not, defect will be fatal on general demurrer. *Treusch* v. *Kamke*, 750.

6. Amount of damages claimed in such case is jurisdictional fact; if over $100, Common Pleas has jurisdiction; if less, justice of peace has exclusive jurisdiction. *Id.*

PLEDGE. See BANK, 1. INSURANCE, 19. LIMITATIONS, STATUTE OF, 9. SALE, 2, 4–6.

POSSESSION. See MORTGAGE, 2, 12. MUNICIPAL CORPORATION, 10, 11. NOTICE, 5. SALE, 7, 8. TROVER, 1.

1. Possession of life tenant is not adverse to estate of remainderman, and he cannot make it so. Acceptance of deed from true owner granting life estate to acceptor, with remainder over, waives any right latter may have acquired by former adverse possession. *Keith* v. *Keith*, 215.

2. If A. is entitled to conveyance of land and, by agreement between A. and B., in order to defraud A.'s creditors, land is conveyed to B., title thereto by adverse possession of more than twenty years may be acquired by A. against B., although A. is without means to pay his debts during such possession, if B. knows that A. is holding land adversely. *Elwell* v. *Hinckley*, 549.

3. At trial of writ of entry, if demandant relies upon title acquired by grantor by adverse possession, books of assessors of taxes of town in which land lies are evidence of assessment of land to demandant's grantor during period of alleged adverse possession. *Id.*

POWER. See TRUST AND TRUSTEE, 3.

When a power, coupled with the trust, is given to two or more persons to be executed by them jointly, and one renounces, other or others may execute power as if originally given only to them. In this case one of the trustees refused to act and survivor did not make appointment in his stead, as testator desired him to do. *Held*, that sales and deeds made and given by the survivor were valid. *Petition of Bailey*, 686.

PRACTICE. See EQUITY, 1, 6, 10–12, 15, 16. ESCAPE, 2. EVIDENCE, 1. PATENT, 4. PLEADING, 2–4. SPECIFIC PERFORMANCE, 1, 2. TRUST AND TRUSTEE, 1.

1. Exception to modification, in charge, of proposition submitted, must be specific. *Ins. Co.* v. *Trust Co.*, 55.

2. In action at law, submitted to decision of circuit court, waiving trial by jury, in which record does not show filing of stipulation in writing required by sect. 649 of Rev. Stat., Supreme Court of United States, upon bill of exceptions and writ of error, cannot review rulings upon any question of law growing out of the evidence, but may determine whether declaration is sufficient to support judgment. *Bond* v. *Dustin*, 216.

3. The filing of said stipulation is not sufficiently shown by statement in record or in bill of exceptions, that "the issue joined by consent is tried by the court, a jury being waived," or that "the case came on for trial by agreement of parties, by the court, without the intervention of a jury." *Id.*

PRE-EMPTION. See UNITED STATES, 3.

PRESCRIPTION. See LIMITATIONS, STATUTE OF, 3. WAY, 1, 2.

PRESUMPTION. See EQUITY, 12. EVIDENCE, 19. HUSBAND AND WIFE, 8. MASTER AND SERVANT, 11. MORTGAGE, 15. NEGLIGENCE, 27, 36.

PUBLIC POLICY. See AGENT, 4. COMMON CARRIER, 22. INSURANCE, 5. SUNDAY, 2–4. WILL, 6.

RAILROAD. See ACTION, 2, 3, 16, 17. AGENT, 5–9. ASSIGNMENT, 1. COMMON CARRIER. CORPORATION, 20, 23. DAMAGES, 8. MANDAMUS, 3. MASTER AND SERVANT, 3–5, 8–12. MECHANICS' LIEN, 1. NEGLIGENCE, 4, 14–16, 18–20, 22–26, 28–31, 36–39. TAX AND TAXATION, 1. WAY, 4, 5.

1. Charter to run road from boundary between South Carolina and Georgia to city of Augusta, and, with assent of railroads in Georgia, to join its track to

RAILROAD.
theirs, did not confer power to run road through Augusta so as to connect with another railroad. *City Council* v. *Railway*, 350.

2. In action brought against railroad company in behalf of next of kin, to recover damages for injuries resulting in death of person, nominal damages may be recovered, if it appears that death was caused by wrongful act or omission of defendant, although no actual pecuniary damages may have been suffered. *Atchison Rd.* v. *Weber*, 479.

3. Where conduct of passenger is such as to render his presence dangerous to fellow-passengers or to occasion them serious annoyance and discomfort, he should be excluded from train. *Id.*

4. Where unattended passenger becomes sick and unconscious or insane, it is duty of railroad company to remove him from train and leave him until he is in fit condition to resume journey, or shall obtain necessary assistance. *Id.*

5. Duty of company is not only to remove such passenger from train, but also to exercise reasonable and ordinary care in temporarily providing for his protection and comfort. It is sufficient in case of such passenger without friends or money, to properly remove him from train and promptly place him in charge of overseer of poor. The statute making it duty of such overseer to grant temporary relief to any non-resident found lying sick in the township or city, or in distress and without friends or money, at expense of county. *Id.*

6. Where trustees for bondholders are operating road, under mortgage for security of bondholders, they are liable, to extent of funds received, to keep road, &c., in repair, furnish new rolling stock when necessary, pay running expenses and apply balance to payment of damages from misfeasance in management of road, and after that to mortgage, as rights of parties may require. Claim for damages to property by fire communicated by locomotive during such period, does not depend upon proof of malfeasance, but is an incident to running of road, and may be considered part of running expenses, and is therefore an equitable lien upon the funds liable in trustees' hands. *Stratton* v. *Railway Co.*, 79.

7. When trustees have conveyed to new corporation, formed by bondholders, such funds subject to such lien, to that extent new corporation would be liable in equity. *Id.*

8. In such case bill should aver that at time of alleged injury and demand for payment, trustees had such funds, or subsequently conveyed such funds to new corporation. *Id.*

RATIFICATION. See AGENT, 8, 9.

RECEIVER. See CORPORATION, 7, 14, 17, 27, 30. LIS PENDENS. PATENT, 1.

1. Fund collected by receiver appointed in action brought by junior mortgagee of land, is applicable to the liens in order of priority. *Williamson* v. *Gerlach*, 623.

2. May be appointed to take charge of assets of insolvent corporation, to save same from waste, before court acquires jurisdiction to adjudicate upon rights of such corporation. Placing property in hands of receiver is in nature of equitable attachment, whereby court, through its officer, acquires custody of such property. *Coal Co.* v. *Coal Co.*, 278.

3. In absence of statutory provision on subject, real estate cannot be vested in receiver, except by conveyance to him. *Id.*

REFORMATION. See EQUITY, 2, 3.

RELEASE. See ATTORNEY, 5. GUARANTY, 2.

RELIGIOUS SOCIETY. See CHARITY, 2. CORPORATION, 24–25.

REMOVAL OF CAUSES.

1. Separate answers to one cause of action, raising separate issues, do not make separate controversies within second clause of section 2 of Act of March 3d, 1875. *Ayres* v. *Wiswall*, 79. See *infra*, 5.

2. In contest over ownership of stock in which it is sought to have the corporation cancel certain shares standing in name of another and issue certificates therefor to plaintff, the corporation is a necessary party. *Crump* v. *Thurber*, 549.

REMOVAL OF CAUSES.

3. Such corporations as Union Pacific Railway Co., and Texas and Pacific Railway Co., created by and organized under Acts of Congress, are entitled, under Act of March 3d, 1875, to remove suits against them, on ground that they are suits "arising under the laws of the United States." *Pacific Railroad Rem. Cases*, 550

4. Where assignment of cause of action is legal and valid, fact that it was made for express purpose of depriving defendant of right to remove case to Federal court, will not invalidate it or entitle defendant to removal. *Vinont* v. *Railway Co.*, 724.

5. In action for damages for malicious prosecution of previous action, where defendants separate in their answers, one party of them cannot claim that there is a controversy wholly between themselves and plaintiffs, such as is contemplated by second clause of sect. 2, of Act of March 3d, 1875. *Pirie* v. *Toedt*, 550. See *ante*, 1.

6. Where bond of administrator is by law taken to state, but is held for security of persons interested in estate of the deceased, suit thereon, so far as jurisdiction of United States Circuit Court is concerned, must be treated as though person for whose use suit is brought was alone named as plaintiff. *Maryland* v. *Baldwin*, 216.

7. Sect. 3, of Act of March 3d, 1875, prescribing time when petition for removal may be filed, &c., is not jurisdictional but formal; application in due time and proffer of proper bond, as required by it, may be waived, either expressly or by implication; and party at whose instance removal has been effected, is estopped from objecting that application therefor was too late. *Ayers* v. *Watson*, 351.

8. Proceeding in state court against administrator, to obtain payment of debt due by decedent in his lifetime, is removable into United States Court when creditor and administrator are citizens of different states, notwithstanding state statute may enact that such claims can only be established in certain state courts. *Hess* v. *Reynolds*, 279.

9. Third clause of sect. 639, of Rev. Stat. (authorizing removals on ground of prejudice or local influence), is not repealed by Act of March 3d, 1875. *Id.*

10. Application for removal, under said third clause, is in time if made before trial or final hearing of cause in state court. *Id.*

REPLEVIN. See GUARDIAN AND WARD, 2.

Cannot be maintained for mass of cotton in which plaintiff's has been innocently mixed by defendant, nor for undivided share. It must be first separated and capable of identification. *Hart* v. *Morton*, 623.

RESIDENCE. See ATTACHMENT, 1.

SALE. See CONTRACT, 5.

1. Delivery of goods on sale for cash is not necessarily a conditional one, for vendor may waive the conditions. Whether there has been such waiver is question of fact. *Fishback* v. *Van Dusen*, 506, *and note.*

2. To constitute *executed* contract of sale, pledge or mortgage of goods, some specific property must be *appropriated* to the contract. *Id.*

3. *Semble*, where party delivers or deposits grain with another, with agreement, expressed or implied, that latter may use and dispose of it, and return equal amount of other grain of same quality, transaction constitutes a sale and not a *bailment*. *Id.*

4. Pledge by warehouseman without segregation from uniform mass. *Id.*

5. Registered bill of sale of personal property which includes stock in trade to be afterwards acquired, is as to such stock, only a contract to assign; vendee cannot maintain trover for the property against *bona fide* pledgee, who received such goods from vendor in ordinary course of business. *Joseph* v. *Lyons*, 298, *and note.*

6. In absence of anything to lead pledgee to believe bill of sale existed, he is not chargeable with constructive notice by reason of failure to inquire. *Id.*

7. Of saw-logs piled on land so low and wet that it was impossible to remove them, except on frozen ground, without cost exceeding value of logs, is valid as against attaching creditors, without change of possession. *Kingsley* v. *White*, 750.

SALE.

8. But if change of possession had been necessary, *held*, that facts that vendor had sold and conveyed lot to third party by deed with only one witness, that such third party, vendor and purchaser, with his attorney, went on lot, and marked logs with purchaser's initials, third party agreeing to take care of them for him, did not constitute sufficient change of possession, as it was not found—and court could not infer it—that third party was in open visible possession of lot. *Kingsley* v. *White*, 750.

9. Where proposition to sell goods is sent by writing, that, by mistake, is ambiguous, and knowing of such ambiguity, receiver of writing, claiming an improbable meaning unreasonably favorable to himself, and not intended or thought of by sender, and without notice to sender or inquiry of him as to his intended meaning, orders the goods, obtains and uses them, he is liable to seller for their value as if no proposition had been sent. *Butler* v. *Moses*, 488.

SCHOOL. See CONSTITUTIONAL LAW, 13. OFFICER, 1, 2.

1. Injunction will not be granted to restrain reading of bible, or singing of religious songs, in school, at suit of tax-payer whose children are not required to be present during such exercises. *Moore* v. *Monroe*, 252, *and note.*

2. Sect. 1764 of Iowa Code, providing that the bible shall not be excluded from any school or institution, nor shall any pupil be required to read it, contrary to parent's or guardian's wishes, is not in violation of article in Bill of Rights, providing: "Nor shall any person be compelled to attend any place of worship, pay * * * taxes * * * for building or repairing places of worship," &c. *Id.*

3. Power of school boards, generally. *Id.*

4. Teacher in public schools, in absence of rule of school board, has right to adopt rule to prevent his pupils using profane language, fighting or quarrelling on their way to and from school, and may punish those infringing the rule, by use of rod. *Deskins* v. *Goss*, 663, *and note.*

5. Regulation that each scholar, when returning after recess, shall bring into school-room, stick of wood for fire, is not "needful" for government, &c., of schools; and scholar cannot be suspended for refusal to comply with such regulation. *State* v. *Board of Education*, 601, *and note.*

SEAL. See AGENT, 2. BILLS AND NOTES, 3. CORPORATION, 29.

SET-OFF. See HUSBAND AND WIFE, 21.

1. Decree in admiralty on libel for damages may be set off against judgment recovered in state court, parties in two suits being the same. *Schantz* v. *Kearney*, 751.

2. Where suit was brought on physician's account for services and medicine, it might be pleaded that he did not do his work skilfully, or plea of recoupment might be filed, springing out of contract; but plea of set-off, based on tort in giving defendant too large a dose of medicine, which injured him to amount of $200, was improper, even if defendant was insolvent. *McLeroy* v. *Sewell*, 149.

3. Maker of separate note in suit may, in equity, set off joint note of plaintiff and another who are both insolvent. Holder of note who took it after maturity holds it subject to every objection, including equitable set-off, to which it was subject in hands of his assignor. Merger of debt into judgment is not so perfect in equity as to preclude judgment creditor from resorting to original demand and relations of parties to it, to enable him to disclose and assert equitable set-off. *Baker* v. *Kinsey*, 216.

SHIPPING. See MASTER AND SERVANT, 1.

If hull and spars of vessel are completed at one port, and sufficient rigging is put on her, and sufficient cargo for ballast is taken, to enable her to go to another port, where materials necessary to rigging and equipment of vessel, and first put upon her, are procured, materials so furnished at latter port are furnished in "construction" of vessel. *McDonald* v. *The Nimbus*, 279.

SLANDER AND LIBEL.

1. Candidate for public office, conferred by popular election, puts his character in issue, so far as respects his qualifications for office; and whatever per-

SLANDER AND LIBEL.
tains thereto is legitimate subject for discussion and comment, which must, however, be confined to truth, or what, in good faith and upon probable cause, is believed to be true. *Expresss Co.* v. *Copeland*, 640, *and note.*

2. In suits for libel, when defendant has asserted several inconsistent pleas in his answer, *inter alia*, one justifying by asserting truth of alleged libellous matter, failure to establish such plea is not to be taken as tending to establish malice, and to aggravate injury done defendant. *Id.*

3. In action of slander petition charged defendant with having spoken certain false, malicious, and defamatory words concerning plaintiff, while giving his testimony before court having jurisdiction of subject-matter then on trial, in answer to interrogatories put to him. Upon demurrer, *held*, 1st. That court will presume, in absence of averment to contrary, that answers of witness were within scope of inquiry pertinent to issue on trial, and that they were believed by witness to be true. 2d. That upon statements of petition and presumptions arising therefrom, witness was absolutely privileged. *Liles* v. *Gaston*, 351.

4. Certain citizens presented to their town council request that K. might be removed from office of constable because, "firstly, said K. is a man utterly devoid of principle, and uses his office more for the purpose of wreaking his personal spite than for the peace and harmony of the community; secondly, said K. is wholly ignorant of the duties of his office; thirdly, said K. has at various times heretofore maliciously and wickedly assaulted and arrested sundry persons who were entirely innocent of the charges against them." *Held*, that statements were not such as, if proved untrue, to imply actual malice. *Kent* v. *Borgartz*, 683.

SPECIFIC PERFORMANCE. See EQUITY, 7, 8.

1. When, on decree for, defendant is in contempt for refusal to perform, court may establish contract as if it had been executed, and enjoin and restrain defendant from denying its execution and delivery. *Wharton* v. *Stoutenburgh*, 351.

2. Such decree may be without notice, but defendant has right of appeal. *Id.*

3. Decreed against vendor's sole devisee in case of parol contract for sale of land, when vendee, with assent of vendor, took open, actual possession of premises in pursuance of agreement, made permanent erections thereon, promptly paid taxes assessed thereon to him by direction of vendor and substantially performed his agreement. *Woodbury* v. *Gardiner*, 804.

STATUTE. See CONSTITUTIONAL LAW, 9, 10, 29, 32. EVIDENCE, 22.

1. May be repealed by implication by subsequent act covering whole ground. *Bracker* v. *Smith*, 422.

2. In construing statute, punctuation may aid, but does not control, unless other means fail, and may be changed or disregarded. *Albright* v. *Payne*, 351.

3. It is duty of courts to take judicial cognisance of public local laws, within sphere of their operation, equally with public general laws. *Slyner* v. *Maryland*, 351.

4. "May" means "shall" wherever rights of public or third persons depend upon exercise of power, or performance of duty to which it refers. *James* v. *Dexter*, 624.

STOCK. See CORPORATION, 1, 2, 11, 14–17, 29. TAX AND TAXATION, 2, 3.

STREET. See ACTION, 16, 17. CONSTITUTIONAL LAW, 19–21. HIGHWAYS, ETC. MUNICIPAL CORPORATION, 4. NEGLIGENCE, 9, 10.

SUBROGATION. See BANK, 3. MORTGAGE, 19.

1. Where land owner, to save his land, pays note secured by deed of trust executed by former owner, upon which he is not legally liable, he is subrogated to rights of holder as against maker. *Allen* v. *Dermott*, 216.

2. Rule that where one of two joint sureties holds collateral other is entitled to share in it, does not apply where sureties are on separate bonds to secure faithful discharge of principal's duty in different capacities, first as guardian of insane ward, and then on ward's death, as administrator of her estate, when collateral was not given as security for signing bond, but for signing as surety certain bank-notes; although after it was claimed that principal was

SUBROGATION.
in default, sureties entered into written agreement to join in defence and share equally in liability; and defendant realized more out of collaterals than he was compelled to pay on said notes. *Sowers* v. *Johnson*, 751.

SUNDAY. See COMMON CARRIER, 24, 25. HIGHWAYS, ETC., 5.
1. Contracts made on Sunday are not void on moral grounds, but because of the penalty inflicted by statute. *Swann* v. *Swann*, 378, *and note.*
2. When by laws of state, large class of citizens may lawfully labor, etc., on Sunday, it is not, in legal sense, against public policy of such state, nor shocking to moral sense of its people, for its courts to enforce contract made on that day in another state, and valid by law of that state. *Id.*
3. Such contract will be enforced by courts of state, by laws of which it would be void. *Id.*
4. The only admissible evidence of public policy of state are its constitution, laws and judicial decisions. *Id.*
5. Publication of ordinances with respect to street improvement, in newspaper of general circulation, in accordance with statute, is valid, although such newspaper is only published on Sunday. *Hastings* v. *City*, 352.
6. Contract of sale made on Sunday is void; but parties may, on subsequent week day, affirm or adopt its terms, as by payment and receipt of purchase-money, and so become bound by them. Demand of payment on week day would compel purchaser to adopt contract or insist on its invalidity. *McKinney* v. *Denby*, 422.

SURETY. See GUARANTY, 1. INTEREST, 1. MORTGAGE, 6. SUBROGATION, 2. USURY, 3.
1. Extension for definite time given on principal note, to which the note on which sureties are liable is collateral, without their consent, discharges them. *Slagle* v. *Pow*, 624.
2. Of receiver in chancery concluded in suit at law on bond, by amount found due on account taken in chancery, he having by due notice had opportunity to intervene in taking of such account. *Ball* v. *Chancellor*, 687.
3. On official bond of city clerk, who by city charter is also *ex officio* register of licenses of city, liable for embezzlement by him of license fees. *Van Valkenbergh* v. *Mayor*, 687.
4. Orators were sureties on note, and defendant payee. Principal attempted to induce payee to accept his own note secured by mortgage on lot of land owned by him in lieu of said note; and payee took mortgage into his possession, and agreed to exchange, if on examination he should find title clear of encumbrance. On being informed by town clerk that there was undischarged mortgage on land, he refused to exchange, and returned mortgage to principal, although surety requested him to hold it. It turned out afterwards that land was clear. *Held*, that surety was not released. *Adams* v. *Dutton*, 751.
5. Wise needed money. Willard agreed to endorse his note to S. for $2700, at four months, if Wise and wife would make to him their note for $3000, at four months, secured by mortgage on wife's land; he to hold and use said mortgage to protect himself against loss and expense because of said endorsement. Neither note was paid at maturity. Mortgage note was never extended, but other note was renewed by agreement of parties to it for valuable consideration. It remained unpaid, and Willard sued Wise and wife on mortgage note. She set up extension of $2700 note as release of her property. *Held*, as Willard made no extension of mortgage note, he did not lose his right to enforce mortgage. *Wise* v. *Willard*, 624.

TAX AND TAXATION. See CONSTITUTIONAL LAW, 1, 14, 15, 22, 23, 27, 28, 30, 33. CORPORATION, 20. EJECTMENT, 1. INJUNCTION, 3. MUNICIPAL CORPORATION, 1, 2, 15. NATIONAL BANK. POSSESSION, 3.
1. Exemption from, granted to railroad, is personal privilege, incapable of transfer, and does not pass to purchaser of road under mortgage. Lost in this case by consolidation. *Railroad Co.* v. *Berry*, 422.
2. Under Vermont statute stock of non-resident stockholders of corporation located in that state may be legally set in list of town in which corporation has

TAX AND TAXATION.
its principal place of business; and corporation compelled by mandamus to pay taxes assessed upon such stock. *St. Albans* v. *Nat. Car Co.*, 624.
3. Statute authorizing such taxation, and allowing corporation to deduct taxes thus paid from dividends, is constitutional. *Id.*
4. When charter is taken subject to future legislation, it may be modified not only by special amendments, but also by general law. *Id.*
5. Only those individuals who can use city sewers should be specially taxed for their construction or maintenance, and each in proportion to the benefits he might individually receive. *Gilmore* v. *Hertig*, 279.
6. In such cases, before special taxes can be made a fixed and permanent charge upon property of such individuals, they must have notice, with opportunity to contest validity and fairness of such taxes; but notice need not be personally served or given before taxes are levied, nor need the proceeding be judicial. *Id.*

TELEGRAPH. See CONTRACT, 2, 3.
1. Company liable for loss naturally following failure to transmit message promptly and correctly, although it was in cipher or otherwise unintelligible. *Hart* v. *Telegraph Co.*, 320, *and note.* But see same case, 604.
2. Stipulation in telegraph blank that company shall not be liable for mistakes or delays in transmission or delivery, or for non-delivery of any unrepeated message, whether happening by negligence of its servants or otherwise, beyond amount received for sending same, is void for want of consideration. *Id.* Reversed, 604. See also *Clement* v. *Telegraph Co.*, 328, *and note.*
3. Company cannot stipulate against liability for its own negligence; it is exempt only for errors arising from causes beyond its control, and burden of showing such exemption rests upon it. *Hart* v. *Telegraph Co.*, 320, *and note.* Reversed, 604.
4. Although telegraph blank is not used, if sender is aware of company's conditions, he is bound thereby. *Clement* v. *Telegraph Co.*, 328, *and note.*
5. In suit for damages for not delivering cable message within reasonable time, copy message written by operator at point of destination and eventually delivered, was admissible, without producing original, there being no claim that message delivered differed from what was sent. *Tel. Co.* v. *Fatman*, 149.
6. Where ship broker, whose office was near that of telegraph company, had sent other messages by cable through such company, and cipher message from Liverpool was sent to him, there was enough to put company on notice that it was a matter of important commercial business, and required reasonable and ordinary despatch in delivery; and party injured by failure to use such despatch would not be limited to nominal damages. *Id.*
7. Telegraph companies and common carriers are not identical as regards notice, or notice of value of despatch. *Id.*
8. If company receives cipher despatch, and undertakes to deliver it for money paid, it is their duty to make such delivery within reasonable time; where message by cable was received at 10.24 and not delivered until 11.55 to office, within five minutes walk, jury were warranted in finding unreasonable delay. *Id.*
9. Where by reason of failure to deliver message, ship broker, to whom message was directed, lost contract, recovery of his commissions was proper. *Id.*

TELEPHONE. See EVIDENCE, 18.
1. Is a common carrier and must furnish equal facilities to all; may be compelled so to do by mandamus. *State* v. *Telephone Co.*, 262.
2. Having removed telephone because of a disputed bill which subscriber refused to pay, company cannot afterwards, on that account, refuse to admit alleged delinquent as subscriber. *Id.*
3. A., Massachusetts corporation, and owner of patent on telephone, licensed B., Missouri corporation, to do telephone business of St. Louis, upon condition that B. should not connect with any telegraph company unless specially authorized by A. A. permitted B. to establish connection with Western Union Telegraph Co. Thereafter B. &. O. Tel. Co. applied for mandamus to compel B.

TELEPHONE.
to permit telephonic communication between it and petitioner. A. was not made a party. *Held*, that petitioner was entitled to relief asked. *B. & O. Co.* v. *Bell Co.*, 573, *and note.*

TENANTS IN COMMON. See FRAUDS, STATUTE OF, 3, 4.
1. One tenant in common is not entitled to recover from his co-tenant contribution in respect of repairs, although reasonable and necessary, done to the common property. Proper remedy is by partition suit, in which court will take into account all proper expenditure upon the property. *Leigh* v. *Dickeson*, 499, *and note.*
2. Defendant was assignee of lease granted by plaintiff of undivided three-fourths of certain premises to which plaintiff was entitled as tenant in common with another. During lease the defendant purchased the one-fourth interest of plaintiff's co-tenant. On expiration of lease defendant continued in occupation of above three-fourths as tenant at sufferance to plaintiff. *Held*, that plaintiff was entitled to recover in respect of use and occupation by defendant of undivided three-fourths. *Id.*

TORT. See ACTION, 16. ASSIGNMENT, 1. CONFLICT OF LAWS, 1. CONSTITUTIONAL LAW, 32. CORPORATION, 3, 21, 27. FORMER RECOVERY, 3. HUSBAND AND WIFE, 28. PLEADING, 5, 6. SET-OFF, 2.
1. Any one owning or keeping an animal that he knows to be of ferocious disposition, accustomed to attack or bite mankind, is bound to restrain such animal at his peril. *Twigg* v. *Ryland*, 191, *and note.*
2. Allowing dog to be kept on his premises does not render owner liable for injuries inflicted by dog away from premises, if such owner did not own or have control of dog. *Id.*
3. To charge defendant he must be shown to have knowledge that the animal is inclined to do the particular kind of mischief that has been done. Onus is on plaintiff to prove knowledge of vicious propensities if animal be of domestic nature, but otherwise if it is of a wild nature. *Id.*
4. Knowledge of servant or wife is not knowledge of owner or keeper, unless it be a servant who has general charge of the animal. *Id.*
5. J., who was injured by negligence of defendant railroad company, assigned his claim for damages to V., who executed agreement in which, in consideration of the assignment, he agreed to dispose of amount realized on claim as follows: To retain for himself $50 and his advances; next, to pay the fees of attorneys and agents employed to prosecute said claim, and to pay the balance to J. *Held*, that the cause of action was assignable; that assignment and agreement did not constitute barratry, champerty or maintenance; and that V. was entitled to maintain the action in his own name. *Vimont* v. *Railway Co.*, 724, *and note.* See also *Gates* v. *Railroad*, 743.
6. In such action, even if it should appear that assignment was colorable and fraudulent, assignor need not be made party to action. *Id.*

TRADE. See CONTRACT, 7.

TREATY. See INTERNATIONAL LAW.

TRESPASS. See ACTION, 1. DAMAGES, 8. EQUITY, 17. FIXTURES, 2. NEGLIGENCE, 38. TROVER, 5, 6.
1. Landlord cannot maintain, for injury to premises let done by tenant during tenancy. His remedy is trespass on the case. *Carroll* v. *Rigney*, 804.
2. Entry upon premises by railway company and construction of railroad over same, which is no injury to inheritance, under verbal license of life tenant, is not a trespass or unlawful entry. Remainderman cannot bring trespass or ejectment. *Railroad* v. *Goodwin*, 280.

TRIAL. See EVIDENCE, 5, 6.
1. In action for personal injuries court may at trial direct plaintiff to submit to personal examination by defendants' physicians. *White* v. *Railroad Co.*, 150.
2. Jury are to find what words were used and their meaning, when oral bargain is made. But court may inform jury what interpretations of language used would be permissible. *Connor* v. *Giles*, 80.

TRIAL.

3. There must be more than a scintilla of evidence to take case to jury. *Connor* v. *Giles*, 80.

4. Instruction authorizing jury, in determining issue, to infer what was the fact from the evidence, "or from such personal knowledge as you may have in relation to matters of this kind," is erroneous. *Douglass* v. *Trask*, 804.

5. Sealed verdict is not final but within control of jury until actually rendered in court and recorded, and up to that time any juryman may withdraw his consent. It should be presented by full jury in open court, so that jury may be polled. *Bishop* v. *Mugler*, 280.

6. It is in discretion of court to limit time to be occupied by counsel in addressing jury, and unless discretion is so exercised as practically to deny to accused constitutional right to have assistance of counsel, it is not error. *Sullivan* v. *State*, 687.

TROVER. See BAILMENT, 4, 5. BANKRUPTCY. BILL OF LADING. SALE, 5.

1. Title to property does not pass when possession is obtained by fraud. *McCrillis* v. *Allen*, 752.

2. Refusal to deliver *prima facie* evidence of conversion. *Singer Co.* v. *King*, 48, *and note*. See also, *State* v. *Stevenson*, 80.

3. Bailee or servant entitled to reasonable time to ascertain ownership; but his acting on order of principal and having no personal interest, will not further protect him. *Id.*

4. Bees are animals *feræ naturæ*, and until reclaimed are owned *ratione soli*. *Rexroth* v. *Coon*, 687.

5. Trespasser obtaining possession of animals *feræ naturæ*, gains no title. *Id.*

6. A., without B.'s permission, put upon tree on B.'s land empty box for bees to hive in. Box remained there more than two years, when C. took box down, took out swarm of bees and replaced box. A., after demand upon C., brought trover for value of bees, honey and honey-comb. *Held*, that action could not be maintained. *Id.*

TRUST AND TRUSTEE. See ACTION, 10. ASSIGNMENT, 10. CORPORATION, 15. EXECUTORS AND ADMINISTRATORS, 1. GUARANTY, 2. POWER. RAILROAD, 6, 7. WILL, 7, 8.

1. Orphans' Court has power to open decree settling intermediate account of trustees, in which it appears that commissions were allowed in excess of sum fixed by statute. *Jackson* v. *Reynolds*, 352.

2. When trust property is to be managed according to "best judgment" of trustees, their discretion and not that of the court has been confided in; court can only interfere when it is not exercised in good faith. *Veazie* v. *Forsaith*, 80.

3. S., wife of B., joined with him in deed to H. of land of B., in trust for use of S. during life, and at any time to convey to such person as S. might request in writing, with written consent of B. Afterwards B. made deed of land to W., in which H. did not join, and in which B. was only grantor, and S. was not described as party, but which was signed, sealed and acknowledged by S. *Held*, that this deed did not convey legal title, and was not made in execution of power reserved to S. *Batchelor* v. *Brereton*, 150.

4. EMPLOYEES AS FIDUCIARIES OF THEIR EMPLOYERS, 425.

ULTRA VIRES. See CORPORATION, 3.

UNDUE INFLUENCE. See EQUITY, 21. WILL, 4.

UNITED STATES. See CONSTITUTIONAL LAW, 25, 26. NEGOTIABLE INSTRUMENT.

1. Value of foreign coins, as ascertained by director of mint, and proclaimed by secretary of treasury, on January 1st in each year, in accordance with Sect. 3564 Rev. Stat. U. S., is conclusive upon custom-house officers and importers. *Hadden* v. *Merritt*, 688.

2. It is duty of land department, of which secretary of interior is head, to determine whether land patented to settler is of class subject to settlement under pre-emption laws, and his judgment is not open to contest by mere intruder without title, in action at law brought by patentee to recover possession. *Ehrhardt* v. *Hogaboon*, 550.

UNITED STATES.

3. Pre-emption laws of, imply a residence on the land both continuous and personal; though settler may be excused for temporary absences, caused by well-founded apprehensions of violence, by sickness, by presence of epidemic, by judicial compulsion or by engagement in military or naval service, or other like reason. *Bofal* v. *Dilla*, 422.

4. Sheriff's sale of certain buildings and lot, under judgments on mechanics' liens dating before but filed after seizure of buildings for forfeiture under internal revenue laws of United States, which forfeiture proceedings were also conducted to a sale, is void because based upon proceedings instituted while the *res* was in exclusive custody and control of United States Court. *Heidritter* v. *Oilcloth Co.*, 150.

5. *Semble*, that the mechanics' lien creditors might have commenced their actions, so far as that step was necessary to preserve their lien, without prejudice to jurisdiction of United States Court. *Id.*

UNITED STATES COURTS. See ERRORS AND APPEALS, 3, 4. MUNICIPAL CORPORATION, 14. PLEADING, 4. REMOVAL OF CAUSES.

1. State statute forbidding physicians to disclose professional communications, obligatory on. *Ins. Co.* v. *Trust Co.*, 55.

2. Sect. 721 of Rev. Stat., declaring that laws of several states, except where constitution, &c., of United States otherwise require, "shall be regarded as rules of decision, in trials at common law in the courts of the United States," relates to nature and principles of evidence, and also to competency of witnesses. *Id.*

3. A United States court having obtained jurisdiction on ground of citizenship of creditor's bill, will not lose it because of citizenship of others added as plaintiffs. Other creditors coming in under such bill can either become co-complainants, or appear before master under decree ordering reference to prove claims. *Stewart* v. *Dunham*, 550.

4. Bill was filed by H. B. "in his capacity as president of the New Orleans National Bank," against citizen of Louisiana, and defendant, on appeal, assigned as error want of proper citizenship to give United States Circuit Court jurisdiction. Upon inspection of whole record it appeared that suit had been treated as suit of bank. *Held*, that defendant on final hearing, in order to defeat jurisdiction, could not assert, for first time, that B. and not the bank, was complainant. *Fortier* v. *Bank*, 150.

USURY.

1. In case of three separate loans the note given at time of second and third loans embraced the amount previously loaned and usurious interest. *Held*, in action to foreclose mortgage given to secure payment of last note, all illegal interest should be deducted. *Beals* v. *Lewis*, 488.

2. Party not injuriously affected by usurious transaction cannot set it up. So if party sells land subject to mortgage given to secure debt, with usury reserved, and purchaser assumes payment of debt as part of purchase-money, such purchaser or those claiming under him, cannot interpose defence of usury to bill to foreclose mortgage. *Stiger* v. *Bent*, 280.

3. Where principal debtor conveyed land to surety to indemnify him against loss, and, after debt has been reduced to judgment and levy made, surety paid off execution, and thereupon brought ejectment against principal to recover land, it was no defence to allege usury in contract between principal and original creditors. *Maples* v. *Cox*, 352.

4. The P. L. Co. held three mortgages made by D. of different dates. Usurious interest was paid on two elder mortgages, and aggregate amount of payments exceeded amount of principal with legal interest thereon. More than three years after last payments thereon., D. filed bill for redemption of all three mortgages, and for an account, and asked that amount overpaid on first two mortgages should be applied in reduction of third. On limitations pleaded in bar of right to account, *held*, that it being conceded that there had been application of payments already made by agreement of parties to first two mortgages, those payments could not by mere operation of law be afterwards transferred to subsequent debt created by last mortgage. *Dickey* v. *Land Co.*, 752.

5. Rule of application of payments stated. *Id.*

VENDOR AND VENDEE. See MORTGAGE, 21. SALE, 9.

VERDICT. See DAMAGES, 2. TRIAL, 5.

VESSEL.

Joint owner of, cannot maintain action against co-owner for conversion thereof, except in case of total destruction, or something equivalent thereto, through fault of such co-owner. That co-owner has negligently damaged vessel, or run it into debt and created liens upon it beyond its value, is not sufficient. *Alderson* v. *Schulze*, 752.

WAGES. See ASSIGNMENT, 2.

WAIVER. See INSURANCE, 6, 25. MORTGAGE, 4. POSSESSION, 1. REMOVAL OF CAUSES, 7.

WAREHOUSEMAN. See COMMON CARRIER, 5. SALE, 3, 4.

WARRANTY. See CORPORATION, 29. INSURANCE, 26.

WASTE. See INJUNCTION, 2.

WATERS AND WATER-COURSES. See CONSTITUTIONAL LAW, 14.

1. Rural landowner has no right to put up such artificial barriers as will flood his neighbor's land with surface water, that would otherwise escape over his own, for mere purpose of reclaiming bed of pond that had always been on his own premises. *Boyd* v. *Conklin*, 305, *and note.*

2. There is no property in underground water percolating in unknown channels, but every landowner has unlimited right of appropriating such water in its natural state by lawful, even if artificial means, and can maintain action against and enjoin anyone interfering with that right by contaminating the water. *Ballard* v. *Tomlinson*, 634, *and note.*

3. Mill-owner upon floatable river need not provide public way for passage of logs over his dam, better than would be afforded by natural condition of river unobstructed by his mills. *Pearson* v. *Rolfe*, 151.

4. Whenever river with mills upon it is floatable, and mill-owner and those who want to float logs are desirous of using water at same time, all parties are entitled to reasonable use of common boom; right of passage is superior but not excessive or exclusive: what is reasonable use is question of fact depending upon all the circumstances. *Id.*

WAY.

1. Existence of public way may be established by evidence of uninterrupted user by public for twenty years. *Thomas* v. *Ford*, 805.

2. At common law, however, principle of presumptive dedication, or *quasi* prescription, does not apply to give rise to right in general public to use land of individual on navigable river, as public landing, and place of deposit of wood and other articles for indefinite time. *Id.*

3. Owner has full dominion and control over land over which is ordinary highway, subject to easement in public. *Id.*

4. Railway company which has entered upon land under license from owner, and constructed its road, cannot plead such license as defence to action of trespass *quare clausum fregit*, for running its trains over said land, brought by owner thereof. A right of way can be acquired in Maryland, only by deed duly executed and recorded, as provided by statute. *Railroad* v. *Algire*, 805.

5. Where railway company has built road on faith of owner's license, which he subsequently revokes, court of equity will restrain him from interfering with railway company in use and enjoyment of right of way pending proceedings to have same condemned. *Id.*

WILL. See FRAUDS, STATUTE OF, 9. HUSBAND AND WIFE, 10. INSURANCE, 18.

1. Under statute requiring that will shall be attested and subscribed in presence of testator, witness must actually sign in testator's presence. *Pawtucket* v. *Ballou*, 805.

2. Where devise is made to class of persons not named, as "heirs at law,"

WILL.
the estate will be divided among the heirs as in case of intestacy. *Kelley* v. *Vigas*, 551.

3. Statute which provides for *ante mortem* probate of will is inoperative and void. *Lloyd* v. *Wayne Circuit Judge*, 790, *and note.*

4. Proceeding authorized by such statute by which questions as to competency, undue influence, &c., can be determined in advance of testator's death, is not within any recognised judicial power, and courts cannot be called upon to enforce it. *Id.*

5. Under statute providing that child unintentionally omitted from will should take *pro rata* share, child is not entitled if omission is intentional, although testator would not have entertained such intention but for mistake as to matters outside of will. *Hurley* v. *O'Sullivan*, 80.

6. It is not against public policy or illegal to make devise or bequest dependent upon condition that legatee should withdraw from priesthood or membership of any order or society connected with Roman Catholic Church, or refrain from forming any such connection. *Barnum* v. *Mayor*, 352.

7. City of Baltimore has power to accept and hold in trust, any property for educational and charitable purposes. *Id.*

8. Where property is held by municipal corporation in trust, or where the trust reposed in the corporation is for a charity, within scope of its duties, court of chancery will compel execution of trust. This jurisdiction is not founded upon statute of 43 Eliz., ch. 4, but is part of original, inherent jurisdiction of Court of Chancery over trusts. *Id.*

9. Testator directed his residuary estate to be "equally divided among my brothers and sisters and their heirs." When will was made and at testator's death, as he knew there were living three brothers, one sister, and children and grandchildren of two deceased sisters. *Held*, that heirs of deceased sisters took by representation, equally with surviving brothers and sister. *Huntress* v. *Place*, 280.

10. Residuary estate was willed to "my sons, S., T., B., H., J. and C. to have and to hold the same * * * to them the said S., T., B., H., J. and C., their heirs and assigns forever." *Held*, devisees being individually named and nothing in will or in testator's circumstances indicating different intent, that devisees took as individuals and not as a class; and one of the son's dying without issue before testator, that his share lapsed, and at testator's death descended to his heirs as intestate estate. *Church* v. *Church*, 805.

11. When testator devises his real estate to his heirs, and gives legacies to persons not his heirs, making them charge on land, it is fraud for heirs, by agreement exclusively between themselves, to procure county court to disallow will—case being there on appeal from decree of probate court establishing will—and then to divide estate solely among themselves, ignoring rights of legatees, who were minors and unrepresented. Court of Chancery, land still being in possession of heir, has power to charge legacy upon it, on ground of fraud. *Wetherbee* v. *Chase*, 688.

WITNESS. See CRIMINAL LAW, 2, 7. EVIDENCE, 13, 16, 17. EXPERT. MALICIOUS PROSECUTION, 3, 4. SLANDER AND LIBEL, 3.

1. Defendant in proceedings, civil or criminal, who testifies in his own behalf, may be impeached like any other witness, by showing his previous conviction of felony. *State* v. *McGuire*, 682.

2. Evidence of character and present reputation of, for truth, admissible to rebut evidence of conviction for crime; but not evidence of innocence of crime, and in explanation of conviction. *Gertz* v. *Railroad Co.*, 80.

3. *Prochein ami* is not party to suit within meaning of Maryland Evidence Act. *Trahern* v. *Colburn*, 550.

4. In action against executor by married woman suing by her husband as next friend, he is competent witness in her behalf. And that he is directly interested in fixing liability upon estate of deceased, because of his liability over to his wife in respect of transactions as her agent, does not exclude him. *Id.*

END OF VOL. XXXIII.